

E B Crawford
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Avizandum Legislation on
**International
Private Law**

5th edition

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**Avizandum Legislation on
International Private Law**

Fifth edition

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EDITORS' PREFACE TO FIFTH EDITION

The fifth edition of *Legislation on International Private Law* is published at a watershed moment in the life of the subject, after the UK left the European Union (at 11pm GMT on 31 January 2020) and the Withdrawal Agreement concluded with the EU entered into force, but before expiry of the transition (or implementation) period provided for in that Agreement (at 11pm GMT on 31 December 2020).

This 'Brexit' edition of the book aims to do two things: first, to incorporate relevant legislation of which account must be taken as at the date of publication and up to 31 December 2020 and, secondly, to integrate those measures that will apply in Scotland upon completion of the implementation period. Accordingly, this edition of the *Legislation* retains relevant EU materials, but also contains prospective amendments consequent to the UK's withdrawal from the EU, most notably in terms of the various EU Exit Regulations as well as the Private International Law (Implementation of Agreements) Bill [HL] 2019-21, a measure which is designed to implement in the UK three international agreements drawn up under the auspices of the Hague Conference on Private International Law.

The appropriate post-31.12.20 provisions are reproduced in parallel with the pre-31.12.20 rules, in a manner that, it is hoped, will be useful to students of the subject. Achieving this outcome has been a painstaking and complex task and we wish to express our gratitude to Margaret Cherry for her patience, diligence and expertise. Where a provision is heavily amended, it is repeated in its entirety with an editorial note to indicate the source of the amendment(s). Where, however, an amendment relates to only a short segment of text, the segment alone is reproduced. As in previous editions, changes to the wording of an original enactment are indicated by the use of square brackets round the affected text. The use of '[...]' indicates a repealed provision or deletion. The use of '...' indicates provisions which, in our discretion, have been omitted for reasons of relevance or brevity. Prospective amendments are indicated by italic type. The arrangement of the book is the same as in previous editions save for the fact that the two parts on secondary legislation have been collapsed into a single part for ease of reference.

In addition to the changes wrought by the various EU Exit regulations and the Private International Law (Implementation of Agreements) Bill, we have included in this edition the Brussels II *bis* Recast Regulation, finalised in 2019 (which, like the Brussels I Recast Regulation, Rome III and the EU Wills & Succession Regulation will remain significant from a comparative perspective), and the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. In family law, the provisions of the Civil Partnership Act 2004 are amended to reflect prospective changes introduced by the Civil Partnership (Scotland) Act 2020.

In July 2016, when writing the Preface to the fourth edition of this book, we remarked that 'The post-Brexit character and content of Scots and UK international private law rules cannot be known at the date of this Preface. Similarly it cannot be predicted what will be the post-Brexit content of the international private law of EU Member States vis-à-vis the UK.' Four years later, the ongoing lack of certainty is dismaying. One of the leitmotifs of the European era has been the marked increase in the volume of legislation on international private law. It will be very interesting to monitor the source and

character of the rules in Scotland and the UK as the subject moves into a new era, adopting a post-EU guise.

Finally, one of the repercussions of the Covid-19 pandemic is the importance of students being able to access study materials electronically. In response to that exigency, we are pleased that, for the first time, this volume is being made available electronically, as well as in hard copy.

JMC and EBC
Glasgow
31 July 2020

EDITORS' PREFACE TO FIRST EDITION

This is an entirely new publication in an area of Scots law which, increasingly, has become legislation based and subject to European and global regulation. The legislative profile of the subject today is in striking contrast with its largely common law character as late as 1970. It is essential for lawyers to have ready access to relevant materials, the more so in view of the varied sources from which the legislative materials derive: the Scottish Parliament, the UK Parliament, the EU Institutions, and the Hague Conference on Private International Law. This collection of materials is wide-ranging in subject matter, as dictated by the nature of Scots international private law, which is co-extensive with the entirety of Scots private law.

This book is intended to be a resource for students and for practitioners, and to stand as a companion to Crawford and Carruthers, *International Private Law in Scotland* (2nd edn, 2006, W Green & Sons).

The materials are arranged in six Parts, namely: Part I (Statutes – UK and ASP); Part II (Statutory Instruments); Part III (Scottish Statutory Instruments); Part IV (EC Materials); Part V (International Conventions); and Part VI (Draft Material).

The unremitting nature of the European harmonisation programme means that legislative revision and refinement exercises must be logged, and projected changes, where near completion, must be intimated. We are pleased that it has been possible to include the final version of Rome II (choice of law rules for non-contractual obligations). We have included the most up-to-date version of the draft Lugano Convention. We have taken the decision not to include the proposed Rome I Regulation (choice of law rules for contractual obligations), negotiations at a European level being ongoing, and the attitude of the UK towards the instrument being unsettled.

In general, where a UK statute has been amended by a later instrument (examples being the Prescription and Limitation (Scotland) Act 1973, and the Divorce (Scotland) Act 1976), our practice is to present the Act in its amended form, incorporating later changes. An important exception to this practice concerns section 2 of the Family Law (Scotland) Act 2006, which inserts a new provision (section 20A) into the Marriage (Scotland) Act 1977; in this instance, the new provision is narrated in both places.

Changes to the wording of an original enactment are indicated by the use of square brackets round the affected text. The use of '[...]' indicates a repealed provision. The use of '...' indicates provisions which, in our discretion, have been omitted for reasons of relevance or brevity.

EBC
JMC
University of Glasgow
August 2007

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PART I

STATUTES

ADMINISTRATION OF JUSTICE ACT 1920 (1920 c 81)

PART II RECIPROCAL ENFORCEMENT OF JUDGMENTS IN THE UNITED KINGDOM AND IN OTHER PARTS OF HIS MAJESTY'S DOMINIONS

9 Enforcement in the United Kingdom of judgments obtained in superior courts in other British dominions

(1) Where a judgment has been obtained in a superior court in any part of His Majesty's dominions outside the United Kingdom to which this Part of this Act extends, the judgment creditor may apply to the High Court in England or [Northern Ireland] or to the Court of Session in Scotland, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case they think it just and convenient that the judgment should be enforced in the United Kingdom, and subject to the provisions of this section, order the judgment to be registered accordingly.

(2) No judgment shall be ordered to be registered under this section if—

- (a) the original court acted without jurisdiction; or
- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or
- (d) the judgment was obtained by fraud; or
- (e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or
- (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

(3) Where a judgment is registered under this section—

- (a) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;
- (b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section;

(c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

(4) [Rules of court shall provide]—

(a) for service on the judgment debtor of notice of the registration of a judgment under this section; and

(b) for enabling the registering court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit; and

(c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

(5) In any action brought in any court in the United Kingdom on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has previously been refused or unless the court otherwise orders.

12 Interpretation

(1) In this Part of this Act, unless the context otherwise requires—

The expression ‘judgment’ means any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place:

The expression ‘original court’ in relation to any judgment means the court by which the judgment was given:

The expression ‘registering court’ in relation to any judgment means the court by which the judgment was registered:

The expression ‘judgment creditor’ means the person by whom the judgment was obtained, and includes the successors and assigns of that person:

The expression ‘judgment debtor’ means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given.

[(2) Subject to [rules of court], any of the powers conferred by this Part of this Act on any court may be exercised by a judge of the court.]

14 Extent of Part II of Act

(1) Where His Majesty is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty’s dominions outside the United Kingdom for the enforcement within that part of His dominions of judgments obtained in the High Court in England, the Court of Session in Scotland, and the [High Court in Northern Ireland], His Majesty may by Order in Council declare that this Part of this Act shall extend to that part of His dominions, and on any such Order being made this Part of this Act shall extend accordingly.

(2) An Order in Council under this section may be varied or revoked by a subsequent Order.

[(3) Her Majesty may by Order in Council under this section consolidate any Orders in Council under this section which are in force when the consolidating Order is made.]

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT 1933
(1933 c 13)

PART I
REGISTRATION OF FOREIGN JUDGMENTS

1 Power to extend Part I of Act to foreign countries giving reciprocal treatment

[(1) If, in the case of any foreign country, Her Majesty is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to, or to any particular class of, judgments given in the courts of that country or in any particular class of those courts, substantial reciprocity of treatment will be assured as regards the enforcement in that country of similar judgments given in similar courts of the United Kingdom, She may by order in Council direct—

(a) that this Part of this Act shall extend to that country;

(b) that such courts of that country as are specified in the Order shall be recognised courts of that country for the purposes of this Part of this Act; and

(c) that judgments of any such recognised court, or such judgments of any class so specified, shall, if within subsection (2) of this section, be judgments to which this Part of this Act applies.

(2) Subject to subsection (2A) of this section, a judgment of a recognised court is within this subsection if it satisfies the following conditions, namely—

(a) it is either final and conclusive as between the judgment debtor and the judgment creditor or requires the former to make an interim payment to the latter; and

(b) there is payable under it a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and

(c) it is given after the coming into force of the Order in Council which made that court a recognised court.

(2A) The following judgments of a recognised court are not within subsection (2) of this section—

(a) a judgment given by that court on appeal from a court which is not a recognised court;

(b) a judgment or other instrument which is regarded for the purposes of its enforcement as a judgment of that court but which was given or made in another country;

(c) a judgment given by that court in proceedings founded on a judgment of a court in another country and having as their object the enforcement of that judgment.]

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(4) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.

[(5) Any Order in council made under this section before its amendment by the Civil Jurisdiction and Judgments Act 1982 which deems any court of a foreign country to be a superior court of that country for the purposes of this Part of this Act shall (without prejudice to subsection (4) of this section) have effect from the time of that amendment as if it provided for that court to be a recognised court of that country for those purposes, and for any final and conclusive judgment of that court, if within subsection (2) of this section, to be a judgment to which this Part of this Act applies.]

2 Application for, and effect of, registration of foreign judgment

(1) A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply to the High Court at any time within six years after

the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:

Provided that a judgment shall not be registered if at the date of the application—

- (a) it has been wholly satisfied; or
- (b) it could not be enforced by execution in the country of the original court.

(2) Subject to the provisions of this Act with respect to the setting aside of registration—

- (a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and
- (b) proceedings may be taken on a registered judgment; and
- (c) the sum for which a judgment is registered shall carry interest; and
- (d) the registering court shall have the same control over the execution of a registered judgment;

as if the judgment had been a judgment originally given in the registering court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as, under this Part of this Act and the Rules of Court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.

[...]

(4) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.

(5) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

4 Cases in which registered judgments must, or may, be set aside

(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

(a) shall be set aside if the registering court is satisfied—

(i) that the judgment is not a judgment to which this Part of this Act applies or was registered in contravention of the foregoing provisions of this Act; or

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or

(iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or

- (iv) that the judgment was obtained by fraud; or
- (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or
- (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3) of this section, be deemed to have had jurisdiction—

(a) in the case of a judgment given in an action in personam—

(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings [...]; or

(ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court; or

(iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;

(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in subsection (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction—

(a) if the subject matter of the proceedings was immovable property outside the country of the original court; or

[...]

(c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

5 Powers of registering court on application to set aside registration

(1) If, on an application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under the last foregoing subsection, or solely for the reason that the judgment was not at the date of the

application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

6 Foreign judgments which can be registered not to be enforceable otherwise

No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the United Kingdom.

7 Power to apply Part I of Act to British dominions, protectorates and mandated territories

(1) His Majesty may by Order in Council direct that this Part of this Act shall apply to His Majesty's dominions outside the United Kingdom and to judgments obtained in the courts of the said dominions as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in the event of His Majesty so directing, this Act shall have effect accordingly and Part II of the Administration of Justice Act 1920, shall cease to have effect except in relation to those parts of the said dominions to which it extends at the date of the Order.

(2) If at any time after His Majesty has directed as aforesaid an Order in Council is made under section one of this Act extending Part I of this Act to any part of His Majesty's dominions to which the said Part II extends as aforesaid, the said Part II shall cease to have effect in relation to that part of His Majesty's dominions.

(3) References in this section to His Majesty's dominions outside the United Kingdom shall be construed as including references to any territories which are under His Majesty's protection and to any territories in respect of which a mandate under the League of Nations has been accepted by His Majesty.

PART II MISCELLANEOUS AND GENERAL

8 General effect of certain foreign judgments

(1) Subject to the provisions of this section, a judgment to which Part I of this Act applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in the United Kingdom as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment—

(a) where the judgment has been registered and the registration thereof has been set aside on some ground other than—

- (i) that a sum of money was not payable under the judgment; or
- (ii) that the judgment had been wholly or partly satisfied; or
- (iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or

(b) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a) of this subsection.

(3) Nothing in this section shall be taken to prevent any court in the United Kingdom recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Act.

9 Power to make foreign judgments unenforceable in United Kingdom if no reciprocity

(1) If it appears to His Majesty that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the [...] courts of the United Kingdom is substantially less favourable than that accorded by the courts of the United Kingdom to judgments of the [...] courts of that country, His Majesty may by Order in Council apply this section to that country.

(2) Except in so far as His Majesty may by Order in Council under this section otherwise direct, no proceedings shall be entertained in any court in the United Kingdom for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

(3) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.

[10A Arbitration awards

The provisions of this Act, except sections 1(5) and 6, shall apply, as they apply to a judgment, in relation to an award in proceedings on an arbitration which has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.]

11 Interpretation

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

‘Appeal’ includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

‘Country of the original court’ means the country in which the original court is situated;

[‘Court’, except in section 10 of this Act, includes a tribunal;]

‘Judgment’ means a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

‘Judgment creditor’ means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

‘Judgment debtor’ means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original court;

[...]

‘Original court’ in relation to any judgment means the court by which the judgment was given;

‘Prescribed’ means prescribed by rules of court;

‘Registration’ means registration under Part I of this Act, and the expressions ‘register’ and ‘registered’ shall be construed accordingly;

‘Registering court’ in relation to any judgment means the court to which an application to register the judgment is made.

(2) For the purposes of this Act, the expression ‘action in personam’ shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants.

12 Application to Scotland

This Act in its application to Scotland shall have effect subject to the following modifications:—

- (a) For any reference to the High Court [...] there shall be substituted a reference to the Court of Session:
- (b) The Court of Session shall, subject to the provisions of subsection (2) of section three of this Act, have power by Act of Sederunt to make rules for the purposes specified in subsection (1) of the said section:
- (c) Registration under Part I of this Act shall be effected by registering in the Books of Council and Session or in such manner as the Court of Session may by Act of Sederunt prescribe:
- (d) [...]
- (e) For any reference to the entering of a judgment there shall be substituted a reference to the signing of the interlocutor embodying the judgment.

MAINTENANCE ORDERS ACT 1950 (1950 c 37)

PART II ENFORCEMENT

16 Application of Part II

(1) Any order to which this section applies (in this Part of this Act referred to as a maintenance order) made by a court in any part of the United Kingdom may, if registered in accordance with the provisions of this Part of this Act in a court in another part of the United Kingdom, be enforced in accordance with those provisions in that other part of the United Kingdom.

(2) This section applies to the following orders, that is to say—

(a) an order for alimony, maintenance or other payments made or deemed to be made by a court in England under any of the following enactments:—

(i) [sections 15 to 17, 19 to 22, 30, 34 and 35 of the Matrimonial Causes Act 1965 and sections 22, 23(1), (2) and (4) and 27 of the Matrimonial Causes Act 1973 and section 14 or 17 of the Matrimonial and Family Proceedings Act 1984];

(ii) [Part I of the Domestic Proceedings and Magistrates' Courts Act 1978];

(iii) [Schedule 1 to the Children Act 1989];

[...]

(v) [paragraph 23 of Schedule 2 to the Children Act 1989] [...];

[...]

[(viii) section 106 of the Social Security Administration Act 1992];

[(ix) Part 1, 8 or 9 of Schedule 5 to the Civil Partnership Act 2004, Schedule 6 to that Act or paragraph 5 or 9 of Schedule 7 to that Act];

(b) a decree for payment of aliment granted by a court in Scotland, including—

(i) an order for the payment of an annual or periodical allowance under section two of the Divorce (Scotland) Act 1938, [an order for the payment of a periodic allowance [or a capital sum] under section 26 of the Succession (Scotland) Act 1964 or section 5 of the Divorce (Scotland) Act 1976; or section 29 of the Matrimonial and Family Proceedings Act 1984; or an order for financial provision in the form of a monetary payment under section 8 of the Family Law (Scotland) Act 1985];

(ii) an order for the payment of weekly or periodical sums under subsection (2) of section three or subsection (4) of section five of the Guardianship of Infants Act 1925;

(iii) an order for the payment of sums in respect of aliment under subsection (3) of section one of the Illegitimate Children (Scotland) Act 1930;

(iv) a decree for payment of aliment under section forty-four of the National Assistance Act 1948, or under section twenty-six of the Children Act 1948; and

[(v) [...] an order under section 43 of the National Assistance Act 1948;]

[(vi) a contribution order under section 80 of, or a decree or an order made under section 81 of, the Social Work (Scotland) Act 1968;]

[(vii) an order for the payment of weekly or other periodical sums under subsection (3) of section 11 of the Guardianship Act 1973;]

[(viii) an order made on an application under [section 18 or 19(8)] of the Supplementary Benefits Act 1976;]

[(ix) an order made on an application under [section 106 of the Social Security Administration Act 1992];]

[(x) an order made on an application under Schedule 11 to the Civil Partnership Act 2004;]

(c) an order for alimony, maintenance or other payments made by a court in Northern Ireland under or by virtue of any of the following enactments:—

(i) subsection (2) of section seventeen, subsections (2) to (7) of section nineteen, subsection (2) of section twenty, section twenty-two or subsection (1) of section twenty-eight of the Matrimonial Causes Act (Northern Ireland) 1939;

(ii) [Schedule 1 to the Children (Northern Ireland) Order 1995;]
[...]

[(iv) Article 41 of the Children (Northern Ireland) Order 1995 or Article 101 of the Health and Personal Social Services (Northern Ireland) Order 1972;]

[(v) any enactment of the Parliament of Northern Ireland containing provisions corresponding with section 22(1), 34 or 35 of the Matrimonial Causes Act 1965, with section 22, 23(1), (2) or (4) or 27 of the Matrimonial Causes Act 1973;]

[(vi) Article 23 or 24 of the Supplementary Benefits (Northern Ireland) Order 1977;]

[(vii) the Domestic Proceedings (Northern Ireland) Order 1980;]

[(viii) any enactment applying in Northern Ireland and corresponding to section 106 of the Social Security Administration Act 1992;]

[(ix) Article 18 or 21 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;]

[(x) Part 1, 7 or 8 of Schedule 15 to the Civil Partnership Act 2004, Schedule 16 to that Act or paragraph 5 or 9 of Schedule 17 to that Act.]

(3) For the purposes of this section, any order made before the commencement of the Matrimonial Causes Act (Northern Ireland) 1939, being an order which, if that Act had been in force, could have been made under or by virtue of any provision of that Act, shall be deemed to be an order made by virtue of that provision.

17 Procedure for registration of maintenance orders

(1) An application for the registration of a maintenance order under this Part of this Act shall be made in the prescribed manner to the appropriate authority, that is to say—

[...]

(b) where the maintenance order was made by a court of summary jurisdiction in Northern Ireland, a resident magistrate [acting for the same petty sessions district as the court which made the order];

(c) in every other case, the prescribed officer of the court which made the order.

(2) If upon application made as aforesaid by or on behalf of the person entitled to payments under a maintenance order it appears that the person liable to make

those payments resides in another part of the United Kingdom, and that it is convenient that the order should be enforceable there, the appropriate authority shall cause a certified copy of the order to be sent to the prescribed officer of a court in that part of the United Kingdom in accordance with the provisions of the next following subsection.

(3) The Court to whose officer the certified copy of a maintenance order is sent under this section shall be—

(a) where the maintenance order was made by a superior court, the [Senior Courts], the Court of Session or the [Court of Judicature], as the case may be;

(b) in any other case—

(i) where the defendant appears to be in England or Wales, the family court,

(ii) where the defendant appears to be in Northern Ireland, a court of summary jurisdiction acting for the place in which the defendant appears to be,

(iii) where the defendant appears to be in Scotland, the sheriff court within the jurisdiction of which the defendant appears to be.]

(4) Where the prescribed officer of any court receives a certified copy of a maintenance order sent to him under this section, he shall cause the order to be registered in that court in the prescribed manner, and shall give notice of the registration in the prescribed manner to the prescribed officer of the court which made the order.

(5) The officer to whom any notice is given under the last foregoing subsection shall cause particulars of the notice to be registered in his court in the prescribed manner.

(6) Where the sums payable under a maintenance order, being an order [made by the family court or a court of summary jurisdiction in Northern Ireland], are payable to or through an officer of any court, that officer shall, if the person entitled to the payments so requests, make an application on behalf of that person for the registration of the order under this Part of this Act; but the person at whose request the application is made shall have the same liability for costs properly incurred in or about the application as if the application had been made by him.

(7) An order which is for the time being registered under this Part of this Act in any court shall not be registered thereunder in any other court.

18 Enforcement of registered orders

(1) Subject to the provisions of this section, a maintenance order registered under this Part of this Act in a court in any part of the United Kingdom may be enforced in that part of the United Kingdom in all respects as if it had been made by that court and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.

[(1A) Does not apply to Scotland.]

[(1B) A maintenance order made in Scotland which is registered under this Part of this Act in the [Senior Courts or the Court of Judicature] shall, if interest is by the law of Scotland recoverable under the order, carry the like interest in accordance with subsection (1) of this section.]

...

WILLS ACT 1963 (1963 c 44)

1 General rule as to formal validity

A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, he was domiciled or had his

habitual residence, or in a state of which, at either of those times, he was a national.

2 Additional rules

(1) Without prejudice to the preceding section, the following shall be treated as properly executed—

(a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the territory with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated;

(c) a will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;

(d) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

3 Certain requirements to be treated as formal

Where (whether in pursuance of this Act or not) a law in force outside the United Kingdom falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

4 Construction of wills

The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

6 Interpretation

(1) In this Act—

'internal law' in relation to any territory or state means the law which would apply in a case where no question of the law in force in any other territory or state arose;

'state' means a territory or group of territories having its own law of nationality;

'will' includes any testamentary instrument or act, and 'testator' shall be construed accordingly.

(2) Where under this Act the internal law in force in any territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows—

(a) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or

(b) if there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time, and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case.

(3) In determining for the purposes of this Act whether or not the execution of a will conformed to a particular law, regard shall be had to the formal

requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

7 Short title, commencement, repeal and extent

- (1) This Act may be cited as the Wills Act 1963.
- (2) This Act shall come into operation on 1st January 1964.
- (3) The Wills Act 1861 is hereby repealed.
- (4) This Act shall not apply to a will of a testator who died before the time of the commencement of this Act and shall apply to a will of a testator who dies after that time whether the will was executed before or after that time, but so that the repeal of the Wills Act 1861 shall not invalidate a will executed before that time.

SUCCESSION (SCOTLAND) ACT 1964 (1964 c 41)

PART II

LEGAL AND OTHER PRIOR RIGHTS IN ESTATES OF DECEASED PERSONS

8 Prior rights of surviving spouse [or civil partner], on intestacy, in dwelling house and furniture

(1) Where a person dies intestate leaving a spouse [or civil partner], and the intestate estate includes a relevant interest in a [dwelling house mentioned in subsection (4)(a) of this section,] the surviving spouse [or civil partner] shall be entitled [, subject to subsection (2B) of this section,] to receive out of the intestate estate—

(a) where the value of the relevant interest does not exceed [[£473,000] or such larger amount as may from time to time be fixed by order of the Secretary of State]—

(i) if subsection (2) of this section does not apply, the relevant interest;

(ii) if the said subsection (2) applies, a sum equal to the value of the relevant interest;

(b) in any other case, the sum of [[£473,000] or such larger amount as may from time to time be fixed by order of the Secretary of State].

[...]

(2) This subsection shall apply for the purposes of paragraph (a) of the foregoing subsection if—

(a) the dwelling house forms part only of the subjects comprised in one tenancy or lease under which the intestate was the tenant; or

(b) the dwelling house forms the whole or part of subjects an interest in which is comprised in the intestate estate and which were used by the intestate for carrying on a trade, profession or occupation, and the value of the estate as a whole would be likely to be substantially diminished if the dwelling house were disposed of otherwise than with the assets of the trade, profession or occupation.

[(2A) Where the tenant of a croft dies intestate leaving a spouse or civil partner or, where he dies leaving no spouse or civil partner, leaving a cohabitant, and the intestate estate includes a relevant interest in a dwelling house mentioned in subsection (4)(b) of this section, the surviving spouse, civil partner or, as the case may be, cohabitant shall be entitled, subject to subsection (2B) of this section, to receive out of the intestate estate—

(a) where the value of the relevant interest does not exceed the amount for the time being fixed by order under subsection (1)(a) of this section, the tenancy of the croft;

(b) in any other case, the sum for the time being fixed by order under subsection (1)(b) of this section.

(2B) If the intestate estate comprises—

(a) a relevant interest in two or more dwelling houses mentioned in subsection (4)(a) of this section, subsection (1) of this section shall have effect only in relation to such one of them as the surviving spouse or civil partner may elect for the purposes of subsection (1) within 6 months after the date of death of the intestate;

(b) a relevant interest in two or more dwelling houses mentioned in subsection (4)(b) of this section, subsection (2A) of this section shall have effect only in relation to such one of them as the surviving spouse, civil partner or cohabitant may elect for the purposes of subsection (2A) within 6 months after that date;

(c) a relevant interest in both—

(i) one or more dwelling houses mentioned in subsection (4)(a) of this section; and

(ii) one or more dwelling houses mentioned in subsection (4)(b) of this section,

the surviving spouse or civil partner shall not be entitled to receive both the entitlement under subsection (1) of this section and that under subsection (2A) of this section and must elect within 6 months after that date whether to take the entitlement under the said subsection (1) or under the said subsection (2A).]

(3) Where a person dies intestate leaving a spouse [or civil partner], and the intestate estate includes the furniture and plenishings of a dwelling house to which this section applies (whether or not the dwelling house is comprised in the intestate estate), the surviving spouse [or civil partner] shall be entitled to receive out of the intestate estate—

(a) where the value of the furniture and plenishings does not exceed [[£29,000] or such larger amount as may from time to time be fixed by order of the Secretary of State], the whole thereof;

(b) in any other case, such part of the furniture and plenishings, to a value not exceeding [[£29,000] or such larger amount as may from time to time be fixed by order of the Secretary of State], as may be chosen by the surviving spouse [or civil partner]:

Provided that, if the intestate estate comprises the furniture and plenishings of two or more such dwelling houses, this subsection shall have effect only in relation to the furniture and plenishings of such one of them as the surviving spouse [or civil partner] may elect for the purposes of this subsection within six months of the date of death of the intestate.

[(4) The dwelling house is—

(a) in a case mentioned in subsection (1) of this section, any dwelling house in which the surviving spouse or civil partner of the intestate was ordinarily resident at the date of death of the intestate and which did not, at that date, form part of a croft of which the intestate was tenant;

(b) in a case mentioned in subsection (2A) of this section, any dwelling house in which the surviving spouse, civil partner or cohabitant was ordinarily resident at the date of death of the intestate and which, at that date, formed part of a croft of which the intestate was tenant.]

(5) Where any question arises as to the value of any furniture or plenishings, or of any interest in a dwelling house, for the purposes of any provision of this section the question shall be determined by arbitration by a single arbiter appointed, in default of agreement, by the sheriff of the county in which the intestate was domiciled at the date of his death or, if that county is uncertain or the intestate was domiciled furth of Scotland, the sheriff of the Lothians and Peebles at Edinburgh.

(6) In this section—

[(za) 'cohabitant' means a person—

- (i) who was living with the intestate as if married to him; or
 - (ii) who was living with the intestate as if in civil partnership with him, and had been so living for at least 2 years.]
- (a) 'dwelling house' includes a part of a building occupied (at the date of death of the intestate) as a separate dwelling; and any reference to a dwelling house shall be construed as including any garden or portion of ground attached to, and usually occupied with, the dwelling house or otherwise required for the amenity or convenience of the dwelling house;
- (b) 'furniture and plenishings' includes garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, articles of household use and consumable stores; but does not include any article or animal used at the date of death of the intestate for business purposes, or money or securities for money, or any heirloom;
- (c) 'heirloom', in relation to an intestate estate, means any article which has associations with the intestate's family of such nature and extent that it ought to pass to some member of that family other than the surviving spouse of the intestate;
- (d) 'relevant interest', in relation to a dwelling house, means the interest therein of an owner, or the interest therein of a tenant, subject in either case to any heritable debt secured over the interest; and for the purposes of this definition 'tenant' means a tenant under a tenancy or lease (whether of the dwelling house alone or of the dwelling house together with other subjects) which is not a tenancy to which the Rent and Mortgage Interest Restrictions Acts 1920 to 1939 apply.

9 Prior right of surviving spouse [or civil partner] to financial provision on intestacy

(1) Where a person dies intestate and is survived by a husband, [wife or civil partner the survivor] shall be entitled to receive out of the intestate estate—

(a) if the intestate is survived by issue [...] the sum of [£50,000 or such larger amount as may from time to time be fixed by order of the Secretary of State], or

(b) if the intestate is not survived by issue [...] the sum of [£89,000 or such larger amount as may from time to time be fixed by order of the Secretary of State],

together with, in either case, interest at the rate of 4 per cent. per annum [or, at such rate as may from time to time be fixed by order of the Secretary of State], on such sum from the date of the intestate's death until payment:

Provided that where the surviving spouse [or civil partner] is entitled to receive a legacy out of the estate of the intestate (other than a legacy of any dwelling house to which the last foregoing section applies or of any furniture and plenishings of any such dwelling house), he or she shall, unless he or she renounces the legacy, be entitled under this subsection to receive only such sum, if any, as remains after deducting from the sum [fixed by virtue of paragraph (a) of this subsection or the sum fixed by virtue of paragraph (b) of this subsection], as the case may be, the amount or value of the legacy.

(2) Where the intestate estate is less than the amount which the surviving spouse [or civil partner] is entitled to receive by virtue of subsection (1) of this section the right conferred by the said subsection on the surviving spouse [or civil partner] shall be satisfied by the transfer to him or her of the whole of the intestate estate.

(3) The amount which the surviving spouse [or civil partner] is entitled to receive by virtue of subsection (1) of this section shall be borne by, and paid out of, the parts of the intestate estate consisting of heritable and moveable property respectively in proportion to the respective amounts of those parts.

(4) Where by virtue of subsection (2) of this section a surviving spouse [or civil

partner] has right to the whole of the intestate estate, he or she shall have the right to be appointed executor.

(5) The rights conferred by the Intestate Husband's Estate (Scotland) Acts 1911 to 1959 on a surviving spouse in his or her deceased spouse's estate shall not be exigible out of the estate of any person dying after the commencement of this Act.

(6) For the purposes of this section—

(a) the expression 'intestate estate' means so much of the net intestate estate as remains after the satisfaction of any claims under the last foregoing section; and

(b) the expression 'legacy' includes any payment or benefit to which a surviving spouse [or civil partner] becomes entitled by virtue of any testamentary disposition; and the amount or value of any legacy shall be ascertained as at the date of the intestate's death.

ADMINISTRATION OF ESTATES ACT 1971 (1971 c 25)

Reciprocal recognition of grants

1 Recognition in England and Wales of Scottish confirmations and Northern Irish grants of representation

(1) Where a person dies domiciled in Scotland—

(a) a confirmation granted in respect of all or part of his estate and noting his Scottish domicile, and

(b) a certificate of confirmation, noting his Scottish domicile and relating to one or more items of his estate,

shall, without being resealed, be treated for the purposes of the law of England and Wales as a grant of representation (in accordance with subsection (2) below) to the executors named in the confirmation or certificate in respect of the property of the deceased of which according to the terms of the confirmation they are executors or, as the case may be, in respect of the item or items of property specified in the certificate of confirmation.

(2) Where by virtue of subsection (1) above a confirmation or certificate of confirmation is treated for the purposes of the law of England and Wales as a grant of representation to the executors named therein then, subject to subsections (3) and (5) below, the grant shall be treated—

(a) as a grant of probate where it appears from the confirmation or certificate that the executors so named are executors nominate; and

(b) in any other case, as a grant of letters of administration.

(3) Section 7 of the Administration of Estates Act 1925 (executor of executor represents original testator) shall not, by virtue of subsection (2)(a) above, apply on the death of an executor named in a confirmation or certificate of confirmation.

(4) Subject to subsection (5) below, where a person dies domiciled in Northern Ireland a grant of probate of his will or letters of administration in respect of his estate (or any part of it) made by the High Court in Northern Ireland and noting his domicile there shall, without being resealed, be treated for the purposes of the law of England and Wales as if it had been originally made by the High Court in England and Wales.

(5) Notwithstanding anything in the preceding provisions of this section, a person who is a personal representative according to the law of England and Wales by virtue only of those provisions may not be required, under section 25 of the Administration of Estates Act 1925, to deliver up his grant to the High Court.

(6) This section applies in relation to confirmations, probates and letters of administration granted before as well as after the commencement of this Act, and

in relation to a confirmation, probate or letters of administration granted before the commencement of this Act, this section shall have effect as if it had come into force immediately before the grant was made.

(7) In this section 'confirmation' includes an additional confirmation, and the term 'executors', where used in relation to a confirmation or certificate of confirmation, shall be construed according to the law of Scotland.

2 Recognition in Northern Ireland of English grants of representation and Scottish confirmations

(1) Where a person dies domiciled in England and Wales a grant of probate of his will or letters of administration in respect of his estate (or any part of it) made by the High Court in England and Wales and noting his domicile there shall, without being resealed, be treated for the purposes of the law of Northern Ireland as if it had been originally made by the High Court in Northern Ireland.

(2) Where a person dies domiciled in Scotland—

(a) a confirmation granted in respect of all or part of his estate and noting his Scottish domicile, and

(b) a certificate of confirmation noting his Scottish domicile and relating to one or more items of his estate,

shall, without being resealed, be treated for the purposes of the law of Northern Ireland as a grant of representation (in accordance with subsection (3) below) to the executors named in the confirmation or certificate in respect of the property of the deceased of which according to the terms of the confirmation they are executors or, as the case may be, in respect of the item or items of property specified in the certificate of confirmation.

(3) Where by virtue of subsection (2) above a confirmation or certificate of confirmation is treated for the purposes of the law of Northern Ireland as a grant of representation to the executors named therein then, subject to subsection (4) below, the grant shall be treated—

(a) as a grant of probate where it appears from the confirmation or certificate that the executors so named are executors nominate; and

(b) in any other case, as a grant of letters of administration.

(4) Notwithstanding anything in any enactment or rule of law, subsection (3)(a) above shall not operate to entitle an executor of a sole or last surviving executor of a testator, whose will has been proved in Scotland only, to act as the executor of that testator.

(5) This section applies in relation to probates, letters of administration and confirmations granted before as well as after the commencement of this Act, and—

(a) in relation to a probate, letters of administration or confirmation granted, and resealed in Northern Ireland, before the commencement of this Act, this section shall have effect as if it had come into force immediately before the grant was so resealed; and

(b) a probate, letters of administration or confirmation granted but not resealed in Northern Ireland before the commencement of this Act shall, for the purposes of this section, be treated as having been granted at the commencement of this Act.

(6) In this section 'confirmation' includes an additional confirmation, and the term 'executors', where used in relation to a confirmation or certificate of confirmation shall be construed according to the law of Scotland.

3 Recognition in Scotland of English and Northern Irish grants of representation

(1) Where a person dies domiciled in England and Wales or in Northern Ireland a grant of probate or letters of administration—

(a) from the High Court in England and Wales and noting his domicile there, or

(b) from the High Court in Northern Ireland and noting his domicile there, shall, without being resealed, be of the like force and effect and have the same operation in relation to property in Scotland as a confirmation given under the seal of office of the Commissariat of Edinburgh to the executor or administrator named in the probate or letters of administration.

(2) This section applies in relation to probates and letters of administration granted before as well as after the commencement of this Act, and in relation to a probate or letters of administration granted before the commencement of this Act, this section shall have effect as if it had come into force immediately before the grant was made.

4 Evidence of grants

(1) In England and Wales and in Northern Ireland—

(a) a document purporting to be a confirmation, additional confirmation or certificate of confirmation given under the seal of office of any commissariat in Scotland shall, except where the contrary is proved, be taken to be such a confirmation, additional confirmation or certificate of confirmation without further proof; and

(b) a document purporting to be a duplicate of such a confirmation or additional confirmation and to be given under such a seal shall be receivable in evidence in like manner and for the like purposes as the confirmation or additional confirmation of which it purports to be a duplicate.

(2) In England and Wales and in Scotland—

(a) a document purporting to be a grant of probate or of letters of administration issued under the seal of the High Court in Northern Ireland or of the principal or district probate registry there shall, except where the contrary is proved, be taken to be such a grant without further proof; and

(b) a document purporting to be a copy of such a grant and to be sealed with such a seal shall be receivable in evidence in like manner and for the like purposes as the grant of which it purports to be a copy.

(3) In Scotland and in Northern Ireland—

(a) a document purporting to be a grant of probate or of letters of administration issued under the seal of the High Court in England and Wales or of the principal or a district probate registry there shall, except where the contrary is proved, be taken to be such a grant without further proof; and

(b) a document purporting to be a copy of such a grant and to be sealed with such a seal shall be receivable in evidence in like manner and for the like purposes as the grant of which it purports to be a copy.

5 Property outside Scotland of which deceased was trustee

(1) A confirmation or additional confirmation granted in respect of property situated in Scotland of a person who died domiciled there, which notes that domicile, may contain or have appended thereto and signed by the sheriff clerk a note or statement of property in England and Wales or in Northern Ireland held by the deceased in trust, being a note or statement which has been set forth in any inventory recorded in the books of the court of which the sheriff clerk is clerk.

(2) Section 1 or, as the case may be, section 2 of this Act shall apply in relation to property specified in such a note or statement as is mentioned in subsection (1) above as it applies in relation to property specified in the confirmation or additional confirmation concerned.

6 Inventory of Scottish estate may include real estate in any part of the United Kingdom

(1) It shall be competent to include in the inventory of the estate of any person who dies domiciled in Scotland any real estate of the deceased situated in England

and Wales or Northern Ireland, and accordingly in section 9 of the Confirmation of Executors (Scotland) Act 1858 the word 'personal' wherever it occurs is hereby repealed.

(2) Section 14(2) of the Succession (Scotland) Act 1964 (act of sederunt to provide for description of heritable property) shall apply in relation to such real estate as aforesaid as it applies in relation to heritable property in Scotland.

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972
(1972 c 18)

PART I
RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS MADE IN
UNITED KINGDOM OR RECIPROCATING COUNTRY

1 Orders in Council designating reciprocating countries*

(1) Her Majesty, if satisfied that, in the event of the benefits conferred by this Part of this Act being applied to, or to particular classes of, maintenance orders made by the courts of any country or territory outside the United Kingdom, similar benefits will in that country or territory be applied to, or to those classes of, maintenance orders made by the courts of the United Kingdom, may by Order in Council designate that country or territory as a reciprocating country for the purposes of this Part of this Act; and, subject to subsection (2) below, in this Part of this Act 'reciprocating country' means a country or territory that is for the time being so designated.

(2) A country or territory may be designated under subsection (1) above as a reciprocating country either as regards maintenance orders generally, or as regards maintenance orders other than those of any specified class, or as regards maintenance orders of one or more specified classes only; and a country or territory which is for the time being so designated otherwise than as regards maintenance orders generally shall for the purposes of this Part of this Act be taken to be a reciprocating country only as regards maintenance orders of the class to which the designation extends.

2 Transmission of maintenance order made in United Kingdom for enforcement in reciprocating country

(1) Subject to subsection (2) below, where the payer under a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in the United Kingdom is residing [or has assets] in a reciprocating country, the payee under the order may apply for the order to be sent to that country for enforcement.

(2) Subsection (1) above shall not have effect in relation to a provisional order or to an order made by virtue of a provision of Part II of this Act.

(3) Every application under this section shall be made in the prescribed manner to the prescribed officer of the court which made the maintenance order to which the application relates.

(4) If, on an application duly made under this section to the prescribed officer of a court in the United Kingdom, that officer is satisfied that the payer under the maintenance order to which the application relates is residing [or has assets] in a reciprocating country, the following documents, that is to say—

*In relation to maintenance orders made by courts in the United Kingdom or by courts in a State specified in Sch 1 to SI 1995/2709 section 1 does not apply.

- (a) a certified copy of the maintenance order;
- (b) a certificate signed by that officer certifying that the order is enforceable in the United Kingdom;
- (c) a certificate of arrears so signed;
- (d) a statement giving such information as the officer possesses as to the whereabouts of the payer [and the nature and location of his assets in that country];
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
- (f) where available, a photograph of the payer;

shall be sent by that officer to the Secretary of State with a view to their being transmitted by the Secretary of State to the responsible authority in the reciprocating country if he is satisfied that the statement relating to the whereabouts of the payer [and the nature and location of his assets in that country] gives sufficient information to justify that being done.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a court in the United Kingdom with respect to a maintenance order to which this section applies, and any such order may be enforced, varied or revoked accordingly.

5 Variation and revocation of maintenance order made in United Kingdom

(1) This section applies to a maintenance order a certified copy of which has been sent to a reciprocating country in pursuance of section 2 of this Act and to a maintenance order made by virtue of section 3 or 4 thereof which has been confirmed by a competent court in such a country.

(2) A court in the United Kingdom having power to vary a maintenance order to which this section applies shall have power to vary that order by a provisional order.

(3) Where the payer under a maintenance order to which this section applies is for the time being residing in a reciprocating country, the court shall not, on an application made by the payee under the order for the variation of the order, vary the order by increasing the rate of the payments thereunder otherwise than by a provisional order.

[(3A) It shall not be necessary for the payee under a maintenance order to which this section applies to intimate to any person the making by him of an application for a provisional order varying the said maintenance order by increasing the rate of the payments thereunder.]

(4) Where a court in the United Kingdom makes a provisional order varying a maintenance order to which this section applies, the prescribed officer of the court shall send in the prescribed manner to the court in a reciprocating country having power to confirm the provisional order a certified copy of the provisional order together with a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.

(5) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying or revoking a maintenance order to which this section applies, together with a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the provisional order was made, is received by the court in the United Kingdom which made the maintenance order, that court may confirm or refuse to confirm the provisional order and, if that order is an order varying the maintenance order, confirm it either without alteration or with such alterations as it thinks reasonable.

(6) Where a certified copy of a provisional order varying or revoking a maintenance order to which this section applies is received by a court as mentioned in subsection (5) above, the prescribed officer of that court shall intimate to the payee under the maintenance order, in the prescribed manner, that the provisional order has been received as aforesaid and that, unless the payee enters appearance within

the prescribed period, the court will confirm the provisional order under this section.

(7) Where a maintenance order to which this section applies has been varied by an order (including a provisional order which has been confirmed) made by a court in the United Kingdom or by a competent court in a reciprocating country, the maintenance order shall, as from [the date on which under the provisions of the order the variation is to take effect], have effect as varied by that order and, where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.

(8) Where a maintenance order to which this section applies has been revoked by an order made by a court in the United Kingdom or by a competent court in a reciprocating country, including a provisional order made by the last-mentioned court which has been confirmed by a court in the United Kingdom, the maintenance order shall, as from [the date on which under the provisions of the order the revocation is to take effect], be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.

(9) Where before a maintenance order made by virtue of section 3 or 4 of this Act is confirmed a document, duly authenticated, setting out or summarising evidence taken in a reciprocating country for the purpose of proceedings relating to the confirmation of the order is received by the court in the United Kingdom which made the order, or that court, in compliance with a request made to it by a court in such a country, takes the evidence of a person residing in the United Kingdom for the purpose of such proceedings, the court in the United Kingdom which made the order shall consider that evidence and if, having done so, it appears to it that the order ought not to have been made—

(a) it shall, in such manner as may be prescribed, give to the person on whose application the maintenance order was made an opportunity to consider that evidence, to make representations with respect to it and to adduce further evidence; and

(b) after considering all the evidence and any representations made by that person, it may revoke the maintenance order.

(10) [*Substitutes subsections (3), (3A) and (6) above for Scotland.*]

6 Registration in United Kingdom court of maintenance order made in reciprocating country

(1) This section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country, including such an order made by such a court which has been confirmed by a court in another reciprocating country but excluding a provisional order which has not been confirmed.

(2) Where a certified copy of an order to which this section applies is received by the Secretary of State from the responsible authority in a reciprocating country, and it appears to the Secretary of State that the payer under the order is residing [or has assets] in the United Kingdom, he shall send the copy of the order to the prescribed officer of the appropriate court.

(3) Where the prescribed officer of the appropriate court receives from the Secretary of State a certified copy of an order to which this section applies, he shall, subject to subsection (4) below, register the order in the prescribed manner in that court.

(4) Before registering an order under this section an officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing [or has assets] within the jurisdiction of the court, and if after taking those steps he is satisfied that the payer is not [residing and has no assets within the jurisdiction of the court] he shall return the certified copy of the order

to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer [and the nature and location of his assets].

7 Confirmation by United Kingdom court of provisional maintenance order made in reciprocating country*

(1) This section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country being a provisional order.

(2) Where a certified copy of an order to which this section applies together with—

(a) a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the order was made; and

(b) a statement of the grounds on which the making of the order might have been opposed by the payer under the order,
is received by the Secretary of State from the responsible authority in a reciprocating country, and it appears to the Secretary of State that the payer under the order is residing in the United Kingdom, he shall send the copy of the order and documents which accompanied it to the prescribed officer of the appropriate court, and that court shall—

(i) if the payer under the order establishes [any grounds on which he might have opposed the making of the order] in the proceedings in which the order was made, refuse to confirm the order; and

(ii) in any other case, confirm the order either without alteration or with such alterations as it thinks reasonable.

(3) In any proceedings for the confirmation under this section of a provisional order, the statement received from the court which made the order of the grounds on which the making of the order might have been opposed by the payer under the order shall be conclusive evidence that the payer might have [opposed the making of the order on any of those grounds].

(4) [On receiving a certified copy of a provisional order sent to him in pursuance of subsection (2) above the prescribed officer of the appropriate court shall intimate to the payer under the order, in the prescribed manner, that the order has been received as aforesaid and that, unless the payer enters appearance within the prescribed period, the court will confirm the order under this section.]

(5) The prescribed officer of a court having power under this section to confirm a provisional order shall, if the court confirms the order, register the order in the prescribed manner in that court, and shall, if the court refuses to confirm the order, return the certified copy of the order and the documents which accompanied it to the Secretary of State.

...

(6) [If such intimation as is mentioned in subsection (4) above cannot be given to the payer under a provisional order in pursuance of that subsection] the officer by whom the certified copy of the order was received shall return that copy and the documents which accompanied it to the Secretary of State with a statement giving such information as he possesses as to the whereabouts of the payer.

(7) This section shall apply to Scotland subject to the following modifications:—

(a), (b) [*modify subsections (4) and (6) above*]

(c) in any proceedings for the confirmation under this section of a provisional order made by a court in a reciprocating country, the sheriff shall apply the law in force in that country with respect to the sufficiency of evidence.

(8) [*Applies to Northern Ireland.*]

*Section 7 is repealed in relation to maintenance orders made by courts in the United States of America, the Republic of Ireland or a Hague Convention country.

8 Enforcement of maintenance order registered in United Kingdom court

(1) Subject to subsection (2) below, a registered order may be enforced in the United Kingdom as if it had been made by the registering court and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.

(2)–(5) *[Do not apply to Scotland.]*

(6) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in any court under this Part of this Act a certificate of arrears sent to the prescribed officer of the court shall be [sufficient evidence] of the facts stated therein.

(7) Subject to subsection (8) below, sums of money payable under a registered order shall be payable in accordance with the order as from [the date on which they are required to be paid under the provisions of the order].

(8) The court having power under section 7 of this Act to confirm a provisional order may, if it decides to confirm the order, direct that the sums of money payable under it shall be deemed to have been payable in accordance with the order as from [the date on which they are required to be paid under the provisions of the order or such later date], as it may specify; and subject to any such direction, a maintenance order registered under the said section 7 shall be treated as if it had been made in the form in which it was confirmed and as if it had never been a provisional order.

(9) In the application of this section to Scotland—

(a) subsections (2) to (5) shall be omitted; and

(b) in subsection (6), for the word ‘evidence’ there shall be substituted the words ‘sufficient evidence’.

[...]

9 Variation and revocation of maintenance order registered in United Kingdom court

(1) Subject to the provisions of this section, the registering court—

(a) shall have the like power, on an application made by the payer or payee under a registered order, to vary or revoke the order as if it had been made by the registering court and as if that court had had jurisdiction to make it; and

(b) shall have power to vary or revoke a registered order by a provisional order.

[(1A) The powers conferred by subsection (1) above are not exercisable in relation to so much of a registered order as provides for the payment of a lump sum.

(1B) The registering court shall not vary or revoke a registered order if neither the payer nor the payee under the order is resident in the United Kingdom.]

...

21 Interpretation of Part I

(1) In this Part of this Act—

‘affiliation order’ means an order (however described) adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;

‘the appropriate court’—

(a) in relation to a person residing [or having assets] in England and [Wales means the family court, and

(b) in relation to a person residing [or having assets] in Northern Ireland means a magistrates court, and in relation to a person residing [or having assets] in Scotland means [a sheriff court], within the jurisdiction of which that person is residing [or has assets];

‘certificate of arrears’, in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or

belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate or, as the case may be, that to the best of his information or belief there are no arrears due thereunder at that date;

‘certified copy’, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

‘court’ includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order;

[...]

‘maintenance order’ means an order (however described) of any of the following descriptions, that is to say—

(a) an order (including an affiliation order or order consequent upon an affiliation order) which provides for the [payment of a lump sum or the making of periodical payments] towards the maintenance of any person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain;

[(aa) an order which has been made in Scotland, on or after the granting of a decree of divorce, for the payment of a periodical allowance by one party to the marriage to the other party;] and

(b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child’s father of expenses incidental to the child’s birth or, where the child has died, of his funeral expenses, and, in the case of a maintenance order which has been varied, means that order as varied;

‘order’, as respects Scotland, includes any interlocutor, and any decree or provision contained in an interlocutor;

‘payee’, in relation to a maintenance order, means the person entitled to the payments for which the order provides;

‘payer’, in relation to a maintenance order, means the person liable to make payments under the order;

...

‘provisional order’ means (according to the context)—

(a) an order made by a court in the United Kingdom which is provisional only and has no effect unless and until confirmed, with or without alteration, by a competent court in a reciprocating country; or

(b) an order made by a court in a reciprocating country which is provisional only and has no effect unless and until confirmed, with or without alteration, by a court in the United Kingdom having power under this Part of this Act to confirm it;

‘reciprocating country’ has the meaning assigned to it by section 1 of this Act;

‘registered order’ means a maintenance order which is for the time being registered in a court in the United Kingdom under this Part of this Act;

‘registering court’, in relation to a registered order, means the court in which that order is for the time being registered under this Part of this Act;

‘the responsible authority’, in relation to a reciprocating country, means any person who in that country has functions similar to those of the Secretary of State under this Part of this Act;

[‘revoke’ and ‘revocation’ include discharge].

(2) For the purposes of this Part of this Act an order shall be taken to be a maintenance order so far (but only so far) as it relates to the [payment of a lump sum or the making of periodical payments] as mentioned in paragraph (a) of the definition of ‘maintenance order’ in subsection (1) above, [to the payment of a periodical allowance as mentioned in paragraph (aa) of that definition] or to the payment by a person adjudged, found or declared to be a child’s father of any such expenses as are mentioned in paragraph (b) of that definition.

(3) Any reference in this Part of this Act to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child's education.

PART II RECIPROCAL ENFORCEMENT OF CLAIMS FOR THE RECOVERY OF MAINTENANCE

25 Convention countries

(1) Her Majesty may by Order in Council declare that any country or territory specified in the Order, being a country or territory outside the United Kingdom to which the Maintenance Convention extends, is a convention country for the purposes of this Part of this Act.

(2) In this section 'the Maintenance Convention' means the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June 1956.

26 Application by person in United Kingdom for recovery, etc of maintenance in convention country

(1) Where a person in the United Kingdom ('the applicant') claims to be entitled to recover in a convention country maintenance from another person, and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the Secretary of State, in accordance with the provisions of this section, to have his claim for the recovery of maintenance from that other person transmitted to that country.

(2) Where the applicant seeks to vary any provision made in a convention country for the payment by any other person of maintenance to the applicant, and that other person is for the time being subject to the jurisdiction of that country, the applicant may apply to the Secretary of State, in accordance with the provisions of this section, to have his application for the variation of that provision transmitted to that country.

(3) An application to the Secretary of State under subsection (1) or (2) above shall be made through the appropriate officer, and that officer shall assist the applicant in completing an application which will comply with the requirements of the law applied by the convention country and shall send the application to the Secretary of State, together with such other documents, if any, as are required by that law.

[(3A) An application under subsection (1) or (2) above, for the purpose of recovering maintenance from a person in a specified State within the meaning of the Recovery of Maintenance (United States of America) Order 1993, and a certificate signed by a justice of the peace or, where the applicant is residing in Scotland, the sheriff, to the effect that the application sets forth facts from which it may be determined that the respondent owes a duty to maintain the applicant and any other person named in the application and that a court in the specified State may obtain jurisdiction of the respondent or his property, shall be registered in the court in the prescribed manner by the appropriate officer or, in Scotland, by the sheriff clerk in the Maintenance Orders (Reciprocal Enforcement) Act 1972 register.]

(4) On receiving an application from the appropriate officer the Secretary of State shall transmit it, together with any accompanying documents, to the appropriate authority in the convention country, unless he is satisfied that the application is not made in good faith or that it does not comply with the requirements of the law applied by that country.

(5) The Secretary of State may request the appropriate officer to obtain from the court of which he is an officer such information relating to the application as

may be specified in the request, and it shall be the duty of the court to furnish the Secretary of State with the information he requires.

[(6) The appropriate officer for the purposes of this section is—

...

(c) where the applicant is residing in Scotland, the sheriff clerk or sheriff clerk depute of the sheriff court within the jurisdiction of which the applicant is residing.]

31 Application by person in convention country for recovery of maintenance in Scotland

(1) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in Scotland, he shall send the application, together with any accompanying documents, to the [Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the sheriff court within the jurisdiction of which that other person resides or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purposes of enabling the solicitor to take] on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.

[(1A) Proceedings arising out of an application under subsection (1) above shall be treated as an action for aliment within the meaning of the Family Law (Scotland) Act 1985 and, subject to subsections (1B) to (1D) below, the provisions of that Act relating to aliment shall apply in relation to claims for maintenance in such proceedings and decrees therein.

(1B) Without prejudice to subsection (2) below, any proceedings mentioned in subsection (1A) above shall be brought in the sheriff court.

(1C) In its application to proceedings mentioned in subsection (1A) above, section 5 of the said Act of 1985 (power to vary or recall decree of aliment) shall be subject to section 34(1) of this Act.

(1D) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant—

(a) then, for the purposes of the said Act of 1985, there shall be assumed to be an obligation of aliment within the meaning of that Act owed by the former spouse to the applicant;

(b) section 2(7) and (8) of that Act shall not apply; and

(c) an order for payment of maintenance in proceedings arising out of the application—

(i) shall, if subsisting at the death of the party making the payment, continue to operate against that party's estate, but without prejudice to the power of the court to vary or recall the order; and

(ii) shall cease to have effect on the remarriage or death of the party receiving payment, except in relation to any arrears due under it.]

(2) Where in any proceedings arising out of such an application as aforesaid the sheriff [, or (on appeal or remit) the Court of Session,] makes an order containing a provision requiring the payment of maintenance, [the order shall be registered forthwith in the prescribed manner in the appropriate sheriff court by the sheriff clerk or sheriff clerk depute of that sheriff court; and where an order of the Court of Session varies or revokes a registered order of the sheriff, the said sheriff clerk or sheriff clerk depute shall amend the register accordingly.]

[(2A) In subsection (2) above 'the appropriate sheriff court' means the sheriff court making the order or (where the order is an order of the Court of Session) from which the remit or appeal has come.]

(3) Without prejudice to the generality of the powers conferred on the Court of Session by section 32 of the Sheriff Courts (Scotland) Act 1971 to regulate by act of sederunt the procedure of the sheriff court, the said powers shall include power to

prescribe the decrees granted, or other things done, by the sheriff, or an officer of the sheriff court, under this Part of this Act, notice of which is to be given to such persons as the act of sederunt may provide and the manner in which such notice shall be given.

[(4) Where an application under subsection (1) above is for the recovery of maintenance from a person who is a former spouse of the applicant an order containing a provision requiring the payment of such maintenance for the benefit of the applicant shall not be made in respect of that application unless—

(i) the marriage between the applicant and the said former spouse has been dissolved by a divorce which has been [obtained in a country or territory outside the United Kingdom] and which is recognised as valid by the law of Scotland;

[(ii) an order for the payment of maintenance for the benefit of the applicant as a divorced person has, in or by reason of, or subsequent to, the divorce proceedings, been made by a court in a convention country;

(iia) in a case where the order mentioned in paragraph (ii) above was made by a court of a different country from that in which the divorce was obtained, either the applicant or the said former spouse was resident in that different country at the time the application for the order so mentioned was made; and]

(iii) the court making the order under this section is satisfied that the former spouse of the applicant has failed to comply with the order mentioned in paragraph (ii) above.

[(4A) In subsection (4)(i) above the reference to the dissolution of a marriage by divorce shall be construed as including a reference to the annulment of a purported marriage and any reference to a marriage, a divorce, a divorced person, a former spouse or divorce proceedings shall be construed accordingly.]

[...]

(6) Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (which relates to the variation and recall by the sheriff of certain orders made by the Court of Session) shall not apply to an order of the Court of Session registered under subsection (2) above.]

MATRIMONIAL PROCEEDINGS (POLYGAMOUS MARRIAGES) ACT 1972 (1972 c 38)

2 Matrimonial relief and declarations as to validity in respect of polygamous marriages: Scotland

(1) A court in Scotland shall not be precluded from entertaining proceedings for, or granting, any such decree as is mentioned in subsection (2) below by reason only that [either party to the marriage is, or has during the subsistence of the marriage been, married to more than one person].

(2) The decrees referred to in subsection (1) above are—

(a) a decree of divorce;

(b) a decree of nullity of marriage;

[...]

[(d) a decree of separation;

(e) a decree of aliment;]

(f) a decree of declarator that a marriage is valid or invalid;

(g) any other decree involving a determination as to the validity of a marriage;

and the reference in subsection (1) above to granting such a decree as aforesaid includes a reference to making any ancillary [or incidental] order which the court has power to make in proceedings for such a decree.

[(3) Provision may be made by rules of court—

- (a) for requiring notice of proceedings brought by virtue of this section to be served on any additional spouse of a party to the marriage in question; and
 - (b) for conferring on any such additional spouse the right to be heard in the proceedings,
- in such cases as may be specified in the rules.]

DOMICILE AND MATRIMONIAL PROCEEDINGS ACT 1973
(1973 c 45)

1 Abolition of wife's dependent domicile

(1) Subject to subsection (2) below, the domicile of a married woman as at any time after the coming into force of this section shall, instead of being the same as her husband's by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

(2) Where immediately before this section came into force a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the coming into force of this section.

(3) This section extends to England and Wales, Scotland and Northern Ireland.

4 Dependent domicile of child not living with his father*

(1) Subsection (2) of this section shall have effect with respect to the dependent domicile of a child as at any time after the coming into force of this section when his father and mother are alive but living apart.

(2) The child's domicile as at that time shall be that of his mother if—

(a) he then has his home with her and has no home with his father; or

(b) he has at any time had her domicile by virtue of paragraph (a) above and has not since had a home with his father.

(3) As at any time after the coming into force of this section, the domicile of a child whose mother is dead shall be that which she last had before she died if at her death he had her domicile by virtue of subsection (2) above and he has not since had a home with his father.

(4) Nothing in this section prejudices any existing rule of law as to the cases in which a child's domicile is regarded as being, by dependence, that of his mother.

(5) In this section, 'child' means a person incapable of having an independent domicile [...].

(6) This section extends to England and Wales [...] and Northern Ireland.

7 Jurisdiction of Court of Session

(1) Subsections [(2A) to (10)] below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the Court of Session to entertain—

(a) an action for divorce, separation, declarator of nullity of marriage, or declarator of marriage; and

[(aa) an action for declarator of recognition, or non-recognition, of a relevant foreign decree.]

[...]

[(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

(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.]

(3) The Court shall have jurisdiction to entertain an action for declarator of marriage [...] if (and only if) either of the parties to the marriage—

*In relation to Scotland s 4 is repealed: Family Law (Scotland) Act 2006, Sch 3, para 1.

- (a) is domiciled in Scotland on the date when the action is begun; or
- (b) was habitually resident in Scotland throughout the period of one year ending with that date; or
- (c) 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.

[(3A) The Court shall have jurisdiction to entertain an action for declarator of nullity of marriage [or for declarator of recognition, or non-recognition, of a relevant foreign decree] 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.]

[...]

(5) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (2) [, (2A), (3) or (3A) above] (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, separation or declarator of marriage, or declarator of nullity of marriage, notwithstanding that jurisdiction would not be exercisable [under any of those subsections].

[(5A) Subsection (5) does not give the Court jurisdiction to entertain proceedings in contravention of Article 6 of the Council Regulation.]

(6) Nothing in this section affects the rules governing the jurisdiction of the Court of Session to entertain, in an action for divorce, an application for payment by a co-defender of damages or expenses.

(7) The foregoing provisions of this section are without prejudice to any rule of law whereby the Court of Session has jurisdiction in certain circumstances to entertain actions for separation as a matter of necessity and urgency.

(8) No action for divorce in respect of a marriage shall be entertained by the Court of Session by virtue of [this section] while proceedings for divorce or nullity of marriage, begun before the commencement of this Act, are pending (in respect of the same marriage) in England and Wales, Northern Ireland, the Channel Islands or the Isle of Man; and provision may be made by rules of court as to when, for the purposes of this subsection, proceedings are to be treated as begun or pending in any of those places.

[(9) In this section, 'relevant foreign decree' means a decree of divorce, nullity or separation granted outwith a member state of the European Union.

(10) References in subsection (3A) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.]

Section 7 as amended by SI 2019/104, Sch 1, para 1(2):

(1) Subsections [(2A) to (10)] below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the Court of Session to entertain—

- (a) an action for divorce, separation, declarator of nullity of marriage, or declarator of marriage; and

[(aa) an action for declarator of recognition, or non-recognition, of a relevant foreign decree.]

[...]

[(2A) The Court shall have jurisdiction to entertain an action for divorce or separation if (and only if) [either of the parties to the marriage—

(a) is domiciled in Scotland on the date when the action is begun, or

(b) was habitually resident in Scotland throughout the period of one year ending with that date.]

(3) The Court shall have jurisdiction to entertain an action for declarator of marriage if (and only if) either of the parties to the marriage—

(a) is domiciled in Scotland on the date when the action is begun; or

(b) was habitually resident in Scotland throughout the period of one year ending with that date; or

(c) 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.

[(3A) The Court shall have jurisdiction to entertain an action for declarator of nullity of marriage [or for declarator of recognition, or non-recognition, of a relevant foreign decree] if (and only if) [either of the parties to the marriage—

[...]

(a) is domiciled in Scotland on the date when the action is begun;

(b) was habitually resident in Scotland throughout the period of one year ending with that date, 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.]

[...]

(5) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (2), (2A), (3) or (3A) above (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, separation or declarator of marriage, or declarator of nullity of marriage, notwithstanding that jurisdiction would not be exercisable under any of those subsections.

[...]

(6) Nothing in this section affects the rules governing the jurisdiction of the Court of Session to entertain, in an action for divorce, an application for payment by a co-defender of damages or expenses.

(7) The foregoing provisions of this section are without prejudice to any rule of law whereby the Court of Session has jurisdiction in certain circumstances to entertain actions for separation as a matter of necessity and urgency.

(8) No action for divorce in respect of a marriage shall be entertained by the Court of Session by virtue of this section while proceedings for divorce or nullity of marriage, begun before the commencement of this Act, are pending (in respect of the same marriage) in England and Wales, Northern Ireland, the Channel Islands or the Isle of Man; and provision may be made by rules of court as to when, for the purposes of this subsection, proceedings are to be treated as begun or pending in any of those places.

[(9) In this section, 'relevant foreign decree' means a decree of divorce, nullity or separation granted outwith [the United Kingdom, the Channel Islands and the Isle of Man].

(10) References in subsection (3A) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.]

8 Jurisdiction of sheriff court in respect of actions for separation

(1) Subsections (2) to [(6)] below shall have effect, subject to section 12(6) of this Act, with respect to the jurisdiction of the sheriff court to entertain—

[(za) an action for declarator of marriage;]

[(a) an action for separation or divorce;

(b) an action for declarator of recognition, or non-recognition, of a relevant foreign decree] [; and

(c) an action for declarator of nullity of marriage.]

(2) The court shall have jurisdiction to entertain an action for separation [or divorce or for declarator of recognition, or non-recognition, of a relevant foreign decree] if (and only if)—

[(a) either—

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

(ii) the action is an excluded action and either party to the marriage in question is domiciled in Scotland at the date when the action is begun;]

(b) either party to the marriage—

(i) was resident in the sheriffdom for a period of forty days ending with that date, or

(ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before the said date, and has no known residence in Scotland at that date.

[(2ZA) The court has jurisdiction to entertain an action for declarator of marriage if (and only if)—

(a) either party to the marriage—

(i) was resident in the sheriffdom for a period of 40 days ending with the date on which the action is begun, or

(ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date, and

(b) any of the following requirements is met in relation to either of the parties to the marriage—

(i) the party is domiciled in Scotland on the date on which the action is begun,

(ii) the party was habitually resident in Scotland throughout the period of one year ending with that date, or

(iii) the party died before that date and either—

(A) was at death domiciled in Scotland, or

(B) had been habitually resident in Scotland throughout the period of one year ending with the date of death.]

[(2A) The court shall have jurisdiction to entertain an action for declarator of nullity of marriage if (and only if)—

(a) either party to the marriage—

(i) was resident in the sheriffdom for a period of forty days ending with the date when the action is begun; or

(ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before that date and has no known residence in Scotland at that date; and

(b) either—

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

(ii) the action is one to which subsection (2B) below applies and a condition mentioned in either subsection (2C) or (2D) is satisfied.

(2B) This subsection applies to an action—

(a) which is an excluded action; or

(b) where one of the parties to the marriage in question died before the date when the action is begun.

(2C) The condition is that either party to the marriage in question is domiciled in Scotland on the date when the action is begun.

(2D) The condition is that either party to the marriage in question died before the date when the action is begun and either—

(a) was at death domiciled in Scotland; or

(b) had been habitually resident in Scotland throughout the period of one year ending with the date of death.]

(3) In respect of any marriage, the court shall have jurisdiction to entertain an action for separation [or divorce] [or declarator of [marriage or of] nullity of marriage] (notwithstanding that jurisdiction would not be exercisable under subsection (2) [, (2ZA)] [or (2A)] above) if it is begun at a time when an original action is pending in respect of the marriage; and for this purpose ‘original action’ means an action in respect of which the court has jurisdiction by virtue of subsection (2), [, (2ZA)] [(2A) or] this subsection.

[(3A) Subsection (3) does not give the court jurisdiction to entertain an action in contravention of Article 7 of the Council Regulation.]

(4) The foregoing provisions of this section are without prejudice to any jurisdiction of a sheriff court to entertain an action of separation [or divorce or declarator of nullity of marriage] remitted to it in pursuance of any enactment or rule of court [, provided that entertaining the action would not contravene Article 7 of the Council Regulation].

[(5) In this section, ‘relevant foreign decree’ has the meaning given by section 7(9).

(6) References in subsection (2) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.]

Subsections (2)–(4) as amended by SI 2019/104, Sch 1, para 1(3):

(2) The court shall have jurisdiction to entertain an action for separation or divorce [...] if (and only if)—

[(a) either of the parties to the marriage—

(i) is domiciled in Scotland on the date when the action is begun, or

(ii) was habitually resident in Scotland throughout the period of one year ending with that date, and]

(b) either party to the marriage—

(i) was resident in the sheriffdom for a period of forty days ending with that date, or

(ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before the said date, and has no known residence in Scotland at that date.

[(2ZA) The court has jurisdiction to entertain an action for declarator of marriage if (and only if)—

(a) either party to the marriage—

(i) was resident in the sheriffdom for a period of 40 days ending with the date on which the action is begun, or

(ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date, and

(b) any of the following requirements is met in relation to either of the parties to the marriage—

(i) the party is domiciled in Scotland on the date on which the action is begun,

(ii) the party was habitually resident in Scotland throughout the period of one year ending with that date, or

(iii) the party died before that date and either—

(A) was at death domiciled in Scotland, or

(B) had been habitually resident in Scotland throughout the period of one year ending with the date of death.]

[(2A) The court shall have jurisdiction to entertain an action for declarator of nullity of marriage [or for declarator of recognition, or non-recognition, of a relevant foreign decree] if (and only if)—

(a) either party to the marriage—

(i) was resident in the sheriffdom for a period of forty days ending with the date when the action is begun; or

(ii) had been resident in the sheriffdom for a period of not less than forty days ending not more than forty days before that date and has no known residence in Scotland at that date; and

[(b) either party to the marriage—

(i) is domiciled in Scotland on the date when the action is begun,

(ii) was habitually resident in Scotland throughout that period of one year ending with that date, or

(iii) died before that date and either—

(A) was at death domiciled in Scotland, or

(B) had been habitually resident in Scotland throughout the period of one year ending with the date of death;]

[...]

(3) In respect of any marriage, the court shall have jurisdiction to entertain an action for separation or divorce (notwithstanding that jurisdiction would not be exercisable under subsection (2) above) if it is begun at a time when an original action is pending in respect of the marriage; and for this purpose 'original action' means an action in respect of which the court has jurisdiction by virtue of subsection (2), or of this subsection.

[...]

(4) The foregoing provisions of this section are without prejudice to any jurisdiction of a sheriff court to entertain an action of separation or divorce remitted to it in pursuance of any enactment or rule of court [...].

[8A Same sex marriages

(1) Sections 7 and 8 do not apply in relation to marriages between persons of the same sex.

(2) Schedule 1B (jurisdiction in relation to same sex marriages (Scotland)) has effect.]

10 Ancillary and collateral orders

(1) [Where after the commencement of this Act an application is competently made to the Court of Session or to a sheriff court for the making, or the variation or recall, of an order which is ancillary or collateral to] an action for any of the following remedies, namely, divorce, separation, declarator of marriage and declarator of nullity of marriage (whether the application is made in the same proceedings or in other proceedings and whether it is made before or after the pronouncement of a final decree in the action), then, if the court has or, as the case may be, had by virtue of this Act or of any enactment or rule of law in force before the commencement of this Act jurisdiction to entertain the action, it shall have jurisdiction to entertain the application [...] whether or not it would have jurisdiction to do so apart from this subsection.

[(1A) For the purposes of subsection (1) above, references to an application for the making, or the variation or recall, of an order are references to the making, or the variation or recall, of an order relating to children, aliment, financial provision on divorce, judicial separation, nullity of marriage or expenses.]

[(1B) Subsection (1) above does not give the Court of Session or a sheriff court jurisdiction to entertain an application in proceedings where—

(a) the court is exercising jurisdiction in the proceedings by virtue of [Article 3] of the Council Regulation; and

(b) the making or variation of an order in consequence of the application would contravene [Article 6] of the Council Regulation.]

[(1BA) In relation to a marriage between persons of the same sex, subsection (1) does not give the Court of Session or a sheriff court jurisdiction to entertain an application in proceedings where—

(a) the court is exercising jurisdiction in the proceedings by virtue of regulations under paragraph 2 of Schedule 1B; and

(b) the making or variation of an order in consequence of the application would contravene the regulations.]

[(1C) If the application or part of it relates to a matter where jurisdiction falls to be determined by reference to the jurisdictional requirements of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011, the Court of Session or a sheriff court may not entertain the application or that part of it unless it has jurisdiction to do so by virtue of that Regulation and that Schedule.

(1D) In subsection (1C) ‘the Maintenance Regulation’ means Council Regulation (EC) No 4/2009 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.]

(2) It is hereby declared that where—

(a) the Court of Session has jurisdiction by virtue of this section to entertain an application for the variation or recall as respects any person of an order made by it, and

(b) the order is one to which section 8 (variation and recall by the sheriff of certain orders made by the Court of Session) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 applies,

then, for the purposes of any application under the said section 8 for the variation or recall of the order in so far as it relates to that person, the sheriff, as defined in that section, has jurisdiction as respects that person to exercise the power conferred on him by that section.

Subsections (1B) and (1BA) are omitted by SI 2019/104, Sch 1, para 1(4). Subsections (1C) and (1D) are omitted by SI 2019/519, Schedule, para 7(3).

11 Sisting of certain actions

[(1)] The provisions of Schedule 3 to this Act shall have effect with respect to the sisting of actions for any of the following remedies, namely, divorce, separation, declarator of marriage or declarator of nullity of marriage, and with respect to the other matters mentioned in that Schedule; but nothing in that Schedule—

(a) requires or authorises a sist of an action which is pending when this Act comes into force; or

(b) prejudices any power to sist an action which is exercisable by any court apart from the Schedule.

[(2) Subsection (1) above and Schedule 3 to this Act and any power mentioned in subsection (1)(b) are subject to Article 19 of the Council Regulation.]

Subsection (2) is omitted by SI 2019/104, Sch 1, para 1(5).

[SCHEDULE 1B

JURISDICTION IN RELATION TO SAME SEX MARRIAGES (SCOTLAND)
(introduced by section 8A)

Introduction

1—(1) This Schedule has effect with respect to the jurisdiction of the Court of Session and of the sheriff court to entertain, in relation to same sex marriages, proceedings for—

- (a) divorce,
 - (b) separation,
 - (c) declarator of marriage,
 - (d) declarator of nullity of marriage,
 - (e) declarator of recognition, or non-recognition, of a relevant foreign decree.
- (2) References in this Schedule to 'relevant proceedings' are to such proceedings as are mentioned in sub-paragraph (1).
- (3) In this Schedule—
 'relevant foreign decree' means a decree of divorce, separation or nullity granted outwith a member State,
 'same sex marriage' means a marriage between persons of the same sex.

Paragraph 1(3) as amended by SI 2019/104, Sch 1, para 1(7):

[(3) In this Schedule—
 'relevant foreign decree' means a decree of divorce, separation or nullity granted outwith [the United Kingdom, the Channel Islands and the Isle of Man],

Power to make provision corresponding to EC Regulation 2201/2003

- 2—(1) The Scottish Ministers may by regulations make provision—
- (a) as to the jurisdiction of courts in Scotland in relevant proceedings in relation to a same sex marriage where one of the parties to the marriage—
 - (i) is or has been habitually resident in a member State,
 - (ii) is a national of a member State, or
 - (iii) is domiciled in a part of the United Kingdom or in the Republic of Ireland, and
 - (b) as to the recognition in Scotland of any judgment of a court of another member State which orders the divorce or separation of the parties to a same sex marriage, or the annulment of a same sex marriage.
- (2) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27 November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.
- (3) The regulations may provide that for the purposes of this Schedule and the regulations 'member State' means—
- (a) all member States with the exception of such member States as are specified in the regulations, or
 - (b) such member States as are specified in the regulations.
- (4) The regulations may make provision under sub-paragraph (1)(b) which applies even in a case where the date of the divorce, separation or annulment is earlier than the date on which this paragraph comes into force.
- (5) The regulations are subject to the affirmative procedure.

Paragraph 2 is omitted by SI 2019/104, Sch 1, para 1(7).

Divorce or separation

- 3—(1) The Court of Session has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if)—
- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
 - (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage is domiciled in Scotland on the date on which the proceedings are begun.
- (2) The sheriff court has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if)—

- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
- (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

(3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if the following requirements are met—

- (a) the parties married each other in Scotland,
- (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 2, and
- (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Paragraph 3(1) and (3) as amended by SI 2019/104, Sch 1, para 1(7):

3—(1) The Court of Session has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if (and only if) [either of the parties to the marriage]—

- (a) is domiciled in Scotland on the date when the proceedings are begun, or
- (b) was habitually resident in Scotland throughout the period of one year ending with that date].

(3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for the divorce or separation of the parties to a same sex marriage if the following requirements are met—

- (a) the parties married each other in Scotland,
- (b) no court has, or is recognised as having, jurisdiction [...], and
- (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Declarator of marriage

4—(1) In relation to a same sex marriage, the Court of Session has jurisdiction to entertain proceedings for declarator of marriage if (and only if) either of the parties to the marriage—

- (a) is domiciled in Scotland on the date on which the proceedings are begun,
- (b) was habitually resident in Scotland throughout the period of one year ending with that date, or
- (c) 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.

(2) In relation to a same sex marriage, the sheriff court has jurisdiction to entertain proceedings for declarator of marriage if (and only if)—

- (a) the requirements of paragraph (a), (b) or (c) of sub-paragraph (1) are met in relation to either party to the marriage, and
- (b) either party of the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

Nullity of marriage

5—(1) The Court of Session has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—

- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
 - (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage—
 - (i) is domiciled in Scotland on the date on which the proceedings are begun, or
 - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) The sheriff court has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—
- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
 - (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.
- (3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if the following requirements are met—
- (a) the parties married each other in Scotland,
 - (b) no court has, or is recognised as having, jurisdiction under regulations under paragraph 2, and
 - (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Paragraph 5 as amended by SI 2019/104, Sch 1, para 1(7):

5—(1) The Court of Session has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if) [...] either party to the marriage—

- (i) is domiciled in Scotland on the date on which the proceedings are begun [or was habitually resident throughout the period of one year ending with that date], or
 - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.
- (2) The sheriff court has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if (and only if)—
- (a) the requirements of [...] sub-paragraph (1) are met, and
 - (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.
- (3) Despite sub-paragraph (2), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain proceedings for declarator of nullity of a same sex marriage if the following requirements are met—

- (a) the parties married each other in Scotland,
- (b) no court has, or is recognised as having, jurisdiction [...], and
- (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Recognition, or non-recognition, of foreign decrees

6—(1) The Court of Session has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if)—

- (a) the Scottish courts have jurisdiction under regulations under paragraph 2, or
- (b) no court has, or is recognised as having, jurisdiction under those regulations and either party to the marriage—
 - (i) is domiciled in Scotland on the date on which the proceedings are begun, or
 - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.

(2) The sheriff court has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if)—

- (a) the requirements of paragraph (a) or (b) of sub-paragraph (1) are met, and
- (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

Paragraph 6 as amended by SI 2019/104, Sch 1, para 1(7):

6—(1) The Court of Session has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if) [...] either party to the marriage—

- (i) is domiciled in Scotland on the date on which the proceedings are begun [or was habitually resident in Scotland throughout the period of one year ending with that date], or
- (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of one year ending with the date of death.

(2) The sheriff court has jurisdiction to entertain proceedings for declarator of recognition, or non-recognition, of a relevant foreign decree relating to a same sex marriage if (and only if)—

- (a) the requirements of [...] sub-paragraph (1) are met, and
- (b) either party to the marriage—
 - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the proceedings are begun, or
 - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date.

Supplementary provision

7—(1) Paragraph 3(1) does not affect any rule of law under which the Court of

Session has jurisdiction in certain circumstances to entertain proceedings for separation as a matter of necessity and urgency.

(2) Paragraphs 3 and 5 do not affect any jurisdiction of a sheriff court to entertain any proceedings for separation, divorce or declarator of nullity of marriage remitted to the court under any enactment or rule of court, if entertaining the proceedings would not contravene regulations under paragraph 2.

(3) At any time when proceedings are pending in respect of which a court has jurisdiction by virtue of any of paragraphs 3 to 6 (or this paragraph), the court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, separation or declarator of marriage or of nullity of marriage even though that jurisdiction would not be exercisable under any of paragraphs 2 to 6.]

In paragraph 7(2) the words from 'if entertaining' to the end of the sentence are omitted by SI 2019/104, Sch 1, para 1(7).

SCHEDULE 3 SISTING OF CONSISTORIAL ACTIONS (SCOTLAND)

Mandatory sists

8. Where before the beginning of the proof in any action for divorce which is continuing in the Court of Session [or in the Sheriff Court] it appears to the Court [concerned] on the application of a party to the marriage—

(a) that in respect of the same marriage proceedings for divorce or nullity of marriage are continuing in a related jurisdiction; and

(b) that the parties to the marriage have resided together after the marriage was contracted; and

(c) that the place where they resided together when the action in the Court was begun or, if they did not then reside together, where they last resided together before the date on which that action was begun is in that jurisdiction; and

(d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which that action was begun;

it shall be the duty of the Court, subject to paragraph 10(2) below, to sist the action before it.

9.—(1) Where before the beginning of the proof in any consistorial action which is continuing in the Court of Session or in a sheriff court, it appears to the court concerned—

(a) that any other proceedings in respect of the marriage in question or capable of affecting its validity are continuing in another jurisdiction, and

(b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for those other proceedings to be disposed of before further steps are taken in the action in the said court, the court may then if it thinks fit sist that action.

(2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) above, the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being sisted, or not being sisted.

(3) Sub-paragraph (1) above is without prejudice to the duty imposed [...] by paragraph 8 above.

(4) If, at any time after the beginning of the proof in any consistorial action which is pending in the Court of Session or a sheriff court, the court concerned is

satisfied that a person has failed to perform the duty imposed on him in respect of the action and any such other proceedings as aforesaid by paragraph 7 above, subparagraph (1) of this paragraph shall have effect in relation to that action and to the other proceedings as if the words ‘before the beginning of the proof’ were omitted; but no action in respect of the failure of a person to perform such a duty shall be competent.

PRESCRIPTION AND LIMITATION (SCOTLAND) ACT 1973
(1973 c 52)

[23A Private international law application

(1) Where the substantive law of a country other than Scotland falls to be applied by a Scottish court as the law governing an obligation, the court shall apply any relevant rules of law of that country relating to the extinction of the obligation or the limitation of time within which proceedings may be brought to enforce the obligation to the exclusion of any corresponding rule of Scots law.

(2) This section shall not apply where it appears to the court that the application of the relevant foreign rule of law would be incompatible with the principles of public policy applied by the court.

(3) This section shall not apply in any case where the application of the corresponding rule of Scots law has extinguished the obligation, or barred the bringing of proceedings prior to the coming into force of the Prescription and Limitation (Scotland) Act 1984.

[(4) This section shall not apply in any case where the law of a country other than Scotland falls to be applied by virtue of any choice of law rule contained in [the Rome I Regulation or] the Rome II Regulation.]

[(5) In subsection (4)—

(a) ‘the Rome I Regulation’ means Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), including that Regulation as applied by regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009 (conflicts falling within Article 22(2) of Regulation (EC) No 593/2008), and

(b) ‘the Rome II Regulation’ means Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), including that Regulation as applied by regulation 4 of the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008 (conflicts falling within Article 25(2) of Regulation (EC) No 864/2007).]

In subsection (5)(a) and (b), for ‘conflicts falling within Article 22(2)’ substitute ‘application’: SI 2019/834, reg 2.

EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975
(1975 c 34)

1 Application to United Kingdom court for assistance in obtaining evidence for civil proceedings in other court

Where an application is made to the High Court, the Court of Session or the High Court of Justice in Northern Ireland for an order for evidence to be obtained in the part of the United Kingdom in which it exercises jurisdiction, and the court is satisfied—

(a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (‘the requesting court’) exercising jurisdiction in any

other part of the United Kingdom or in a country or territory outside the United Kingdom; and

(b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated, the High Court, Court of Session or High Court of Justice in Northern Ireland, as the case may be, shall have the powers conferred on it by the following provisions of this Act.

DIVORCE (SCOTLAND) ACT 1976
(1976 c 39)

[3A Postponement of decree of divorce where religious impediment to remarriage exists

(1) Notwithstanding that irremediable breakdown of a marriage has been established in an action for divorce, the court may—

(a) on the application of a party ('the applicant'); and

(b) if satisfied—

(i) that subsection (2) applies; and

(ii) that it is just and reasonable to do so,

postpone the grant of decree in the action until it is satisfied that the other party has complied with subsection (3).

(2) This subsection applies where—

(a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage; and

(b) the other party can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage.

(3) A party complies with this subsection by acting in the way described in subsection (2)(b).

(4) The court may, whether or not on the application of a party and notwithstanding that subsection (2) applies, recall a postponement under subsection (1).

(5) The court may, before recalling a postponement under subsection (1), order the other party to produce a certificate from a relevant religious body confirming that the other party has acted in the way described in subsection (2)(b).

(6) For the purposes of subsection (5), a religious body is 'relevant' if the applicant considers the body competent to provide the confirmation referred to in that subsection.

(7) In this section—

'religious marriage' means a marriage solemnised by a marriage celebrant of a prescribed religious body, and 'religion of that marriage' shall be construed accordingly;

'prescribed' means prescribed by regulations made by the Scottish Ministers.

(8) Any reference in this section to a marriage celebrant of a prescribed religious body is a reference to—

(a) a minister, clergyman, pastor or priest of such a body;

(b) a person who has, on the nomination of such a body, been registered under section 9 of the Marriage (Scotland) Act 1977 (c 15) as empowered to solemnise marriages; or

(c) any person who is recognised by such a body as entitled to solemnise marriages on its behalf.

(9) Regulations under subsection (7) shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.]

MARRIAGE (SCOTLAND) ACT 1977
(1977 c 15)

1 Minimum age for marriage

- (1) No person domiciled in Scotland may marry before he attains the age of 16.
 (2) A marriage solemnised in Scotland between persons either of whom is under the age of 16 shall be void.

3 Notice of intention to marry

...
 (5) A party to a marriage intended to be solemnised in Scotland who is not domiciled in any part of the United Kingdom is required, if practicable, to submit under subsection (1)(c) above a certificate, issued by a competent authority in the state in which the party is domiciled, to the effect that he is not known to be subject to any legal incapacity (in terms of the law of that state) which would prevent his marrying:

Provided that such a party—

(i) may, where under the law of the state in which he is domiciled his personal law is that of another foreign state, submit in lieu of the said certificate a like certificate issued by a competent authority in that other state;

(ii) need not submit a certificate under paragraph (c) of subsection (1) above,

(a) if he has been resident in the United Kingdom for a period of 2 or more years immediately before the date on which he submits a marriage notice under that subsection in respect of the said marriage; [or

(b) if no such certificate has been issued only by reason of the fact that the validity of a divorce or annulment granted by a court of civil jurisdiction in Scotland or entitled to recognition in Scotland under section 44 or 45 of the Family Law Act 1986 is not recognised in the state in which the certificate would otherwise have been issued.]

(c) [if no such certificate has been issued only by reason of the fact that the parties to the intended marriage are of the same sex;] [or

(d) if no such certificate has been issued only by reason of the fact that the law of the state in which the party is domiciled prevents the parties to the qualifying civil partnership within the meaning of section 5(6) from marrying.]

[3A Additional information if party not relevant national

(1) This section applies to a marriage notice submitted to a district registrar in accordance with section 3 if one, or each, of the parties to the proposed marriage is not a relevant national.

(2) But this section does not apply if the parties are in a qualifying civil partnership (within the meaning of section 5(6)(1)) with each other.

(3) For each party to the proposed marriage who is not a relevant national, the notice shall be accompanied by whichever of statements A, B or C is applicable to that person.

(4) Statement A is a statement that the person has the appropriate immigration status.

(5) Statement B is a statement that the person holds a relevant visa in respect of the proposed marriage.

(6) Statement C is a statement that the person neither—

(a) has the appropriate immigration status, nor

(b) holds a relevant visa in respect of the proposed marriage.

(7) If the notice is accompanied by the statement referred to in the first column of an entry in this table, the notice shall also be accompanied by the information and photographs referred to in the second column of that entry (insofar as that entry is applicable to the parties to the proposed marriage)—

<i>If the notice is accompanied by this statement ...</i>	<i>... the notice shall also be accompanied by ...</i>
Statement A (in respect of one or both of the parties to the proposed marriage)	For each party in respect of whom statement A is made, details of the particular immigration status which that party has
Statement B (in respect of one or both of the parties to the proposed marriage)	<ol style="list-style-type: none"> 1. For each party, a specified photograph of that party 2. For each party in respect of whom statement B is made, details of the relevant visa which that party has
Statement C (in respect of one or both of the parties to the proposed marriage)	<ol style="list-style-type: none"> 1. For each party, a specified photograph of that party 2. For each party, the usual address of that party 3. For each party who has previously used any name or names other than the person's name stated in the marriage notice, a statement of the other name or names 4. For each party who currently uses, or has previously used, an alias or aliases, a statement of the alias or aliases

(8) If the notice is accompanied by more than one of statements A, B and C, subsection (7) shall be complied with in relation to each of those statements; but where the notice is accompanied by statements B and C, subsection (7) does not require the notice to be accompanied by more than one specified photograph of each party.

(9) If the notice is accompanied by statement C for a party to the proposed marriage—

(a) the notice may also be accompanied by a statement ('statement D') of that person's immigration position in the United Kingdom;

(b) if the notice is accompanied by statement D for a party to the proposed marriage, the person may provide the district registrar with details of his immigration position in the United Kingdom; and

(c) if any such details are provided, the district registrar shall record them.

(10) In this section and section 3B—

(a) a reference—

(i) to a person having the appropriate immigration status, or

(ii) to a person holding a relevant visa,

is to be construed in accordance with section 49 of the 2014 Act;

(b) a reference to the particular immigration status which a person has is a reference to the immigration status set out in any of paragraphs (a) to (c) of section 49(2) of that Act which the person has;

(c) a reference to a person's immigration position in the United Kingdom includes a reference to the person's not being entitled to be in the United Kingdom.

(11) In this section 'specified photograph' means a photograph that is in accordance with regulations made by the Secretary of State under section 54(2) of, and paragraph 3 of Schedule 5 to, the 2014 Act (and for this purpose 'photograph' includes other kinds of images).]

[3B Additional evidence if party not relevant national

(1) If a marriage notice to which section 3A(1) applies ('the notice') is accompanied by statement A (referred to in section 3A(4)) and accordingly is also accompanied by details of the particular immigration status which a party to the

proposed marriage has, the notice shall also be accompanied by specified evidence of that status.

(2) If the notice is accompanied by statement B (referred to in section 3A(5)), the notice shall also be accompanied by specified evidence of the holding of the relevant visa by the party to the proposed marriage.

(3) If, in accordance with section 3A(7), the notice is accompanied by the usual address of a party to the proposed marriage, the notice shall also be accompanied by specified evidence that it is that party's usual address.

(4) If the notice is accompanied by statement D (referred to in section 3A(9)), the notice may also be accompanied by evidence of the person's immigration position in the United Kingdom.

(5) If subsection (1) or (2) applies to the notice, and the notice is not accompanied by the specified evidence required by that subsection, the notice shall be accompanied by—

(a) photographs and addresses of the kinds referred to in paragraphs 1 and 2 in the relevant entry in section 3A(7);

(b) as respects the usual address of each party that is provided in accordance with paragraph (a), specified evidence that the address provided is that party's usual address; and

(c) names and aliases of the kinds referred to in paragraphs 3 and 4 in the relevant entry in section 3A(7) (insofar as those paragraphs are applicable to the parties to the proposed marriage).

(6) In this section—

'relevant entry in section 3A(7)' means the second column of the last entry in the table in section 3A(7);

'specified evidence' means evidence that is in accordance with regulations made by the Secretary of State under section 54(2) of, and paragraph 3 of Schedule 5 to, the 2014 Act.]

5 Objections to marriage

...

(4) For the purposes of [this section] and section 6 of this Act, there is a legal impediment to a marriage where—

(a) that marriage would be void by virtue of section 2(1) of this Act;

(b) one of the parties is, or both are, already married [or in civil partnership other than a qualifying civil partnership with each other];

(c) one or both of the parties will be under the age of 16 on the date of solemnisation of the intended marriage;

(d) one or both of the parties is or are incapable of understanding the nature of a marriage ceremony or of consenting to marriage;

[...]

(f) one or both of the parties is, or are, not domiciled in Scotland and, on a ground other than—

[(i) one mentioned in paragraphs (a) to (d) above; or

(ii) the ground that the parties are of the same sex,]

a marriage in Scotland between the parties would be void ab initio according to the law of the domicile of the party or parties as the case may be.

(5) A person who has submitted an objection in accordance with subsection (1) above may at any time withdraw it:

Provided that the Registrar General shall be entitled to have regard to that objection notwithstanding such withdrawal.

[(6) For the purposes of subsection (4)(b) a 'qualifying civil partnership' is—

[(a) a civil partnership which—

(i) was registered in—

(A) Scotland, or

(B) England and Wales or Northern Ireland; and

(ii) has not been dissolved, annulled or ended by death; or

(b) a civil partnership which is treated under Chapter 2 of Part 5 of the Civil Partnership Act 2004 as having formed by virtue of an overseas relationship being registered and has not been dissolved, annulled or ended by death.]

(7) A civil partnership which was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 is to be treated for the purposes of [subsection (6)(a)(i)(A)] as having been registered in Scotland if—

(a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order; and

(b) details of the civil partnership have been sent to the Registrar General of Births, Deaths and Marriages for Scotland.]

...

7 Marriage outside Scotland where a party resides in Scotland

(1) Where a person residing in Scotland is a party to a marriage intended to be solemnised in—

(a) England or Wales with a party residing in England or Wales and desires; or

(b) any country, territory or place outside Great Britain, and, for the purpose of complying with the law in force in that country, territory or place, is required to obtain from a competent authority in Scotland,

a certificate in respect of his legal capacity to marry, he may submit, in the form and with the fee and documents specified in [section 3(1)(a), (b) and (d)] of this Act, notice of intention to marry to the district registrar for the district in which he resides (the said registrar being in this section referred to as the ‘appropriate registrar’) as if it were intended that the marriage should be solemnised in that district, and sections 3(2) [, (3) and (4A) to (4C)] and 4 of this Act shall apply accordingly.

(2) The appropriate registrar shall, if satisfied (after consultation, if the appropriate registrar considers it necessary, with the Registrar General) that a person who has by virtue of subsection (1) above submitted a marriage notice to him is not subject to any legal incapacity (in terms of Scots law) which would prevent his marrying, issue to that person a certificate in the prescribed form that he is not known to be subject to any such incapacity:

Provided that the certificate shall not be issued earlier than [28 days] after the date of receipt (as entered by the appropriate registrar in the marriage notice book) of the marriage notice.

(3) Any person may, at any time before a certificate is issued under subsection (2) above, submit to the appropriate registrar an objection in writing to such issue; and the objection shall be taken into account by the appropriate registrar in deciding whether, in respect of the person to whom the certificate would be issued, he is satisfied as mentioned in the said subsection (2).

[(4) For the purpose of subsection (3) above, an objection which is submitted by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.]

20 Second marriage ceremony

(1) Where two persons have gone through a marriage ceremony with each other outside the United Kingdom, whether before or after the commencement of this Act, but they are not, or are unable to prove that they are, validly married to each other in Scots law, an authorised registrar, on an application made to him by those persons, may, subject to the approval of the Registrar General and to subsection (2) below, solemnise their marriage as if they had not already gone through a marriage ceremony with each other.

(2) Sections 3 to 6 and 18 and 19 of this Act shall apply for the purpose of solemnising a marriage under this section except that—

(a) there shall be submitted to the authorised registrar a statutory declaration by both parties—

- (i) stating that they have previously gone through a marriage ceremony with each other; and
- (ii) specifying the date and place at which, and the circumstances in which, they went through that ceremony;
- (b) section 5(4)(b) of this Act shall not apply in respect of the parties already being married to each other;
- (c) the Marriage Schedule shall contain such modifications as the Registrar General may direct to indicate that the parties have previously gone through a marriage ceremony with each other; and

...

[20A Grounds on which marriage void

- (1) Where subsection (2) or (3) applies in relation to a marriage solemnised in Scotland, the marriage shall be void.
- (2) This subsection applies if at the time of the marriage ceremony a party to the marriage who was capable of consenting to the marriage purported to give consent but did so by reason only of duress or error.
- (3) This subsection applies if at the time of the marriage ceremony a party to the marriage was incapable of—
 - (a) understanding the nature of marriage; and
 - (b) consenting to the marriage.
- (4) If a party to a marriage purported to give consent to the marriage other than by reason only of duress or error, the marriage shall not be void by reason only of that party's having tacitly withheld consent to the marriage at the time when it was solemnised.
- (5) In this section 'error' means—
 - (a) error as to the nature of the ceremony; or
 - (b) a mistaken belief held by a person ('A') that the other party at the ceremony with whom A purported to enter into a marriage was the person whom A had agreed to marry.]

22 Interpreters at marriage ceremony

- (1) Where the person by whom a marriage is to be solemnised under this Act considers that it is necessary or desirable, he may use the services of an interpreter (not being a party or a witness to the marriage) at the marriage ceremony.
- (2) The interpreter shall—
 - (a) before the marriage ceremony, sign a written statement that he understands, and is able to converse in, any language in respect of which he is to act as interpreter at that ceremony; and
 - (b) immediately after the marriage ceremony, furnish the person solemnising the marriage with a certificate written in English and signed by the interpreter that he has faithfully acted as interpreter at that ceremony.
- (3) Any fee for the services of the interpreter shall be paid by the parties to the marriage.

UNFAIR CONTRACT TERMS ACT 1977 (1977 c 50)

27 Choice of law clauses

- (1) Where the [law applicable to] a contract is the law of any part of the United Kingdom only by choice of the parties (and apart from that choice would be the law of some country outside the United Kingdom) sections 2 to 7 and 16 to 21 of this Act do not operate as part [of the law applicable to the contract].
- (2) This Act has effect notwithstanding any contract term which applies or purports to apply the law of some country outside the United Kingdom, where [...]—
 - (a) the term appears to the court, or arbitrator or arbiter to have been

imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of this Act; or

[(b) the contract is a consumer contract as defined in Part II of this Act, and the consumer at the date when the contract was made was habitually resident in the United Kingdom, and the essential steps necessary for the making of the contract were taken there, whether by him or by others on his behalf.]*

*Section 27(2)(b) repealed by Consumer Rights Act 2015, Sch 4 para 24 in respect of contracts post-dating 1 October 2015.

CIVIL JURISDICTION AND JUDGMENTS ACT 1982 (1982 c 27)

PART I IMPLEMENTATION OF THE CONVENTIONS

Main implementing provisions

1 Interpretation of references to the Conventions and Contracting States

(1) In this Act—

‘the 1968 Convention’ means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (including the Protocol annexed to that Convention), signed at Brussels on 27th September 1968;

‘the 1971 Protocol’ means the Protocol on the interpretation of the 1968 Convention by the European Court, signed at Luxembourg on 3rd June 1971;

‘the Accession Convention’ means the Convention on the accession to the 1968 Convention and the 1971 Protocol of Denmark, the Republic of Ireland and the United Kingdom, signed at Luxembourg on 9th October 1978;

[‘the 1982 Accession Convention’ means the Convention on the accession of the Hellenic Republic to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention, signed at Luxembourg on 25th October 1982;]

[‘the 1989 Accession Convention’ means the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention and the 1982 Accession Convention, signed at Donostia–San Sebastián on 26th May 1989;]

[‘the 1996 Accession Convention’ means the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention, the 1982 Accession Convention and the 1989 Accession Convention, signed at Brussels on 29th November 1996;]

[‘the 2005 Hague Convention’ means the Convention on Choice of Court Agreements concluded on 30th June 2005 at The Hague;]

[‘the 2007 Hague Convention’ means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23 November 2007;]

[‘the [Brussels Conventions]’ means the 1968 Convention, the 1971 Protocol, the Accession Convention, the 1982 Accession Convention, the 1989 Accession Convention [and the 1996 Accession Convention];]

[‘the Lugano Convention’ means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of

Norway, the Swiss Confederation and the Kingdom of Denmark signed on behalf of the European Community on 30th October 2007;]

['the Maintenance Regulation' means Council Regulation (EC) No 4/2009 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;]

['the Regulation' means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters].

(2) In this Act, unless the context otherwise requires—

(a) references to, or to any provision of, the 1968 Convention or the 1971 Protocol are references to that Convention, Protocol or provision as amended by the Accession Convention [, the 1982 Accession Convention, the 1989 Accession Convention and the 1996 Accession Convention]; and

[...]

(b) [any reference in any provision to a numbered Article without more is a reference—

(i) to the Article so numbered of the 1968 Convention, in so far as the provision applies in relation to that Convention, and

(ii) to the Article so numbered of the Lugano Convention, in so far as the provision applies in relation to that Convention,]

and any reference to a sub-division of a numbered Article shall be construed accordingly.

(3) [In this Act—

['2005 Hague Convention State,' in any provision, in the application of that provision in relation to the 2005 Hague Convention, means a State bound by that Convention;]

['2007 Hague Convention State,' in any provision, in the application of that provision in relation to the 2007 Hague Convention, means a State bound by that Convention;]

'Contracting State', without more, in any provision means—

(a) in the application of the provision in relation to the Brussels Conventions, a Brussels Contracting State;

(b) in the application of the provision in relation to the Lugano Convention, a [State bound by the Lugano Convention]; [and

(c) in the application of the provision in relation to the 2005 Hague Convention, a 2005 Hague Convention State;]

['Brussels Contracting State' means a state which is one of the original parties to the 1968 Convention or one of the parties acceding to that Convention under the Accession Convention, or under the 1982 Accession Convention, or under the 1989 Accession Convention, but only with respect to any territory—

(a) to which the Brussels Conventions apply; and

(b) which is excluded from the scope of the Regulation pursuant to [Articles 349 and 355 of the Treaty on the Functioning of the European Union];]

['Maintenance Regulation State', in any provision, in the application of that provision in relation to the Maintenance Regulation means a Member State;]

[...]

['Regulation State' in any provision, in the application of that provision in relation to the Regulation, means a 'Member State'].

['State bound by the Lugano Convention' in any provision, in the application of that provision in relation to the Lugano Convention has the same meaning as in Article 1(3) of that Convention;]

[(4) Any question arising as to whether it is the Regulation, any of [the Brussels Conventions, the Lugano Convention or the 2005 Hague Convention] which applies in the circumstances of a particular case shall be determined as follows—

(a) in accordance with [Article 64] of the Lugano Convention (which determines the relationship between the Brussels Conventions and the Lugano Convention);

(b) in accordance with Article 68 of the Regulation (which determines the relationship between the Brussels Conventions and the Regulation) [; and

(c) in accordance with Article 26 of the 2005 Hague Convention (which determines the relationship between the Brussels Conventions, the Lugano Convention, the Regulation and the 2005 Hague Convention).]

Section 1 as amended by SI 2019/479, reg 6 and SI 2019/519, reg 12 and prospectively amended by the Private International Law (Implementation of Agreements) Bill 2020.

[Interpretation]

1 Interpretation of references to the Conventions and Contracting States

(1) In this Act—

‘the 1968 Convention’ means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (including the Protocol annexed to that Convention), signed at Brussels on 27th September 1968;

‘the 1971 Protocol’ means the Protocol on the interpretation of the 1968 Convention by the European Court, signed at Luxembourg on 3rd June 1971;

‘the Accession Convention’ means the Convention on the accession to the 1968 Convention and the 1971 Protocol of Denmark, the Republic of Ireland and the United Kingdom, signed at Luxembourg on 9th October 1978;

‘the 1982 Accession Convention’ means the Convention on the accession of the Hellenic Republic to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention, signed at Luxembourg on 25th October 1982;]

‘the 1989 Accession Convention’ means the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention and the 1982 Accession Convention, signed at Donostia—San Sebastián on 26th May 1989;]

‘the 1996 Hague Convention’ means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children concluded on 19th October 1996 at The Hague;]

‘the 2005 Hague Convention’ means the Convention on Choice of Court Agreements concluded on 30th June 2005 at The Hague;]

‘the 2007 Hague Convention’ means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23 November 2007;]

[...]

‘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, [...] and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ No L299, 16.11.2005, p62; OJ No L79, 21.3.2013, p4) [as that Regulation had effect and was applied immediately before exit day];].

[...]

(3) [In this Act—

‘2005 Hague Convention State’, in any provision, in the application of that

provision in relation to the 2005 Hague Convention, means a State bound by that Convention;]

['2007 Hague Convention State', in any provision, in the application of that provision in relation to the 2007 Hague Convention, means a State bound by that Convention;]

'Contracting State', without more, in any provision means—

[...]

[(c) in the application of the provision in relation to the 2005 Hague Convention, a 2005 Hague Convention State;]

[...]

2 The [Brussels Conventions] to have the force of law

(1) The [Brussels Conventions] shall have the force of law in the United Kingdom, and judicial notice shall be taken of them.

(2) [For convenience of reference there are set out in Schedules 1, 2, 3, 3A, 3B and 3C respectively the English texts of—

(a) the 1968 Convention as amended by Titles II and III of the Accession Convention, by Titles II and III of the 1982 Accession Convention, by Titles II and III of, and Annex I(d) to, the 1989 Accession Convention and by Titles II and III of the 1996 Accession Convention;

(b) the 1971 Protocol as amended by Title IV of the Accession Convention, by Title IV of the 1982 Accession Convention, by Title IV of the 1989 Accession Convention and by Title IV of the 1996 Accession Convention;

(c) Titles V and VI of the Accession Convention (transitional and final provisions) as amended by Title V of the 1989 Accession Convention;

(d) Titles V and VI of the 1982 Accession Convention (transitional and final provisions); and

(e) Titles VI and VII of the 1989 Accession Convention (transitional and final provisions),

(f) Titles V and VI of the 1996 Accession Convention (transitional and final provisions),

being texts prepared from the authentic English texts referred to in Articles 37 and 41 of the Accession Convention [, in Article 17 of the 1982 Accession Convention, in Article 34 of the 1989 Accession Convention and in Article 18 of the 1996 Accession Convention.]

Section 2 is omitted by SI 2019/479, reg 7.

3 Interpretation of the [Brussels Conventions]

(1) Any question as to the meaning or effect of any provision of the [Brussels Conventions] shall, if not referred to the European Court in accordance with the 1971 Protocol, be determined in accordance with the principles laid down by and any relevant decision of the European Court.

(2) Judicial notice shall be taken of any decision of, or expression of opinion by, the European Court on any such question.

(3) Without prejudice to the generality of subsection (1), the following reports (which are reproduced in the Official Journal of the Communities), namely—

(a) the reports by Mr P Jenard on the 1968 Convention and the 1971 Protocol; and

(b) the report by Professor Peter Schlosser on the Accession Convention; and

(c) [the report by Professor Demetrios I Evrigenis and Professor K D Kerameus on the 1982 Accession Convention; and

(d) the report by Mr Martinho de Almeida Cruz, Mr Manuel Desantes Real and Mr P Jenard on the 1989 Accession Convention,]

may be considered in ascertaining the meaning or effect of any provision of the

[Brussels Conventions] and shall be given such weight as is appropriate in the circumstances.

Section 3 is omitted by SI 2019/479, reg 8.

[...]

Sections 3C to 3E prospectively inserted by the Private International Law (Implementation of Agreements) Bill 2020.

[3C *The 1996 Hague Convention to have the force of law*

- (1) *The 1996 Hague Convention shall have the force of law in the United Kingdom.*
- (2) *For the purposes of this Act the 1996 Hague Convention is to be read together with the following declarations made by the United Kingdom on 27th July 2012—*
 - (a) *the declaration under Article 29 of the Convention, concerning applicable territorial units;*
 - (b) *the declaration under Article 34 of the Convention, concerning communication of requests under paragraph 1 of that Article;*
 - (c) *the declaration under Article 54 of the Convention, concerning the use of French.*
- (3) *For convenience of reference there are set out in Schedules 3D and 3E respectively—*
 - (a) *the English text of the 1996 Hague Convention;*
 - (b) *the declarations referred to in subsection (2).]*

[3D *The 2005 Hague Convention to have the force of law*

- (1) *The 2005 Hague Convention shall have the force of law in the United Kingdom.*
- (2) *For the purposes of this Act the 2005 Hague Convention is to be read together with any reservations or declarations made by the United Kingdom at the time of the approval of the Convention.*
- (3) *For convenience of reference the English text of the 2005 Hague Convention is set out in Schedule 3F.]*

[3E *The 2007 Hague Convention to have the force of law*

- (1) *The 2007 Hague Convention shall have the force of law in the United Kingdom.*
- (2) *For the purposes of this Act the 2007 Hague Convention is to be read together with any reservations or declarations made by the United Kingdom at the time of the approval of the Convention.*
- (3) *For convenience of reference the English text of the 2007 Hague Convention is set out in Schedule 3G.]*

Supplementary provisions as to recognition and enforcement of judgments

In the italic cross heading the word ‘supplementary’ is omitted: SI 2019/479, reg 9.

4 *Enforcement of judgments other than maintenance orders*

(1) A judgment, other than a maintenance order, which is the subject of an application under Article 31 [of the 1968 Convention ...] for its enforcement in any part of the United Kingdom shall, to the extent that its enforcement is authorised by the appropriate court, be registered in the prescribed manner in that court.

In this subsection ‘the appropriate court’ means the court to which the application is made in pursuance of Article 32 (that is to say, the High Court or the Court of Session).

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

(3) A judgment registered under this section 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 it was a judgment which had been originally given] by the registering court and had (where relevant) been entered.

(4) Subsection (3) is subject to Article 39 (restriction of enforcement where appeal pending or time for appeal unexpired), to section 7 and to any provision made by rules of court as to the manner in which and conditions subject to which a judgment registered under this section may be enforced.

Section 4 is omitted by SI 2019/479, reg 10.

[4A Enforcement of judgments, other than maintenance orders, under the Lugano Convention

(1) Where a judgment, other than a maintenance order, is registered under the Lugano Convention, 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 other than a maintenance order registered under the Lugano Convention 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) Subsection (2) is subject to Article 47(3) of the Lugano Convention (restriction on enforcement where appeal pending or time for appeal unexpired), to section 7 (interest on registered judgments) 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 Lugano Convention may be enforced.]

Section 4A is omitted by SI 2019/479, reg 11.

[4B Registration and enforcement of judgments under the 2005 Hague Convention

(1) A judgment which is required to be recognised and enforced under the 2005 Hague Convention in any part of the United Kingdom must be registered in the prescribed manner in the appropriate court, on the application of any interested party.

(2) In subsection (1) 'the appropriate court' means—

- (a) in England and Wales or Northern Ireland, the High Court;
- (b) in Scotland, the Court of Session.

(3) A judgment which is required to be recognised and enforced under the 2005 Hague Convention must be registered without delay on completion of the formalities in Article 13 of the 2005 Hague Convention if the registering court considers that it meets the condition for recognition in Article 8(3) of the 2005 Hague Convention, without any review of whether a ground for refusal under Article 9 applies.

(4) The party against whom enforcement is sought shall not be entitled to make any submission on the application for registration.

(5) Where a judgment which is required to be recognised and enforced under the 2005 Hague Convention has been registered, the reasonable costs or expenses of and incidental to its registration shall be recoverable as if they were sums recoverable under the judgment.

(6) A judgment which is required to be recognised and enforced under the 2005 Hague Convention 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.

(7) Subsection (6) is subject to section 7 (interest on registered judgments) 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 2005 Hague Convention may be enforced.]

5 Recognition and enforcement of maintenance orders

(1) The function of transmitting to the appropriate court an application under Article 31 [of the 1968 Convention ...] for the recognition or enforcement in the United Kingdom of a maintenance order shall be discharged—

- (a) [as respects England and Wales ..., by the Lord Chancellor; and
- (b) as respects Scotland, by the Secretary of State] [; and
- (c) as respects Northern Ireland, by the Department of Justice in Northern Ireland.]

In this subsection ‘the appropriate court’ means the magistrates’ court or sheriff court having jurisdiction in the matter in accordance with the second paragraph of Article 32.

(2) Such an application shall be determined in the first instance by the prescribed officer of that court.

(3) Where on such an application the enforcement of the order is authorised to any extent, the order shall to that extent be registered in the prescribed manner in that court.

(4) A maintenance order registered under this section 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 it was an order which had been originally made by the registering court.

(5) Subsection (4) is subject to Article 39 (restriction on enforcement where appeal pending or time for appeal unexpired), to section 7 and to any provision made by rules of court as to the manner in which and conditions subject to which an order registered under this section may be enforced.

(6) A maintenance order which by virtue of this section is enforceable by a magistrates’ court in Northern Ireland [shall, subject to the modifications of Article 98 of the Magistrates’ Courts (Northern Ireland) Order 1981 specified in subsection (6A) below, be enforceable as an order made by that court to which that article applies].

(6A) [*Applies to Northern Ireland.*]

(7) The payer under a maintenance order registered under this section in a magistrates’ court in England and Wales or Northern Ireland shall give notice of any change of address to the [proper officer] of that court.

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

[(8) In subsection (7) ‘proper officer’ means—

- (a) in relation to a magistrates’ court in England and Wales, the [designated officer]
- for the court; and
- (b) in relation to a magistrates’ court in Northern Ireland, the clerk of the court.]

Section 5 is omitted by SI 2019/479, reg 12.

[5A Recognition and enforcement of maintenance orders under the Lugano Convention

(1) The Secretary of State’s function (under Article 39 and Annex II of the Lugano Convention) of transmitting to the appropriate court an application for the recognition or enforcement in the United Kingdom of a maintenance order (made under Article 38 of the Lugano Convention) shall be discharged—

- (a) as respects England and Wales ..., by the Lord Chancellor; and
- (b) as respects Scotland, by the Scottish Ministers] [; and
- (c) as respects Northern Ireland, by the Department of Justice in Northern Ireland.]

In this subsection 'the appropriate court' means the magistrates' court or sheriff court having jurisdiction in the matter in accordance with the second paragraph of Article 39.

(2) Such an application shall be determined in the first instance by the prescribed officer of the court having jurisdiction in the matter.

(3) A maintenance order registered under the Lugano Convention 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 made by the registering court.

(4) Subsection (3) is subject to Article 47 of the Lugano Convention (restriction on enforcement where appeal pending or time for appeal unexpired), to subsection (6) 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 Lugano Convention may be enforced.

(5) A maintenance order which by virtue of the Lugano Convention is enforceable by a magistrates' court in England and Wales shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 specified in sections 5(5B) and 5(5C) of the Act, be enforceable in the same manner as a magistrates' court maintenance order made by that court.

In this subsection 'magistrates' court maintenance order' has the same meaning as in section 150(1) of the Magistrates' Courts Act 1980.

(6) A maintenance order which by virtue of the Lugano Convention is enforceable by a magistrates' court in Northern Ireland shall, subject to the modifications of Article 98 of the Magistrates' Courts (Northern Ireland) Order 1981 specified in section 5(6A) of this Act, be enforceable as an order made by that court to which that Article applies.

(7) The payer under a maintenance order registered under the Lugano Convention in a magistrates' court in England and Wales or Northern Ireland shall give notice of any change of address to the proper officer of that court.

(8) A person who without reasonable excuse fails to comply with subsection (7) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(9) In subsection (7) 'proper officer' means—

(a) in relation to a magistrates' court in England and Wales, the designated officer; and

(b) in relation to a magistrates' court in Northern Ireland, the clerk of the court.]

Section 5A is omitted by SI 2019/479, reg 13.

6 Appeals under Article 37, second paragraph and Article 41

(1) The single further appeal on a point of law referred to in the 1968 Convention [...] Article 37, second paragraph and Article 41 in relation to the recognition or enforcement of a judgment other than a maintenance order lies—

(a) in England and Wales or Northern Ireland, to the Court of Appeal or to the House of Lords in accordance with Part II of the Administration of Justice Act 1969 (appeals direct from the High Court to the House of Lords);

(b) in Scotland, to the Inner House of the Court of Session.

(2) Paragraph (a) of subsection (1) has effect notwithstanding section 15(2) of the Administration of Justice Act 1969 (exclusion of direct appeal to the House of Lords in cases where no appeal to that House lies from a decision of the Court of Appeal).

(3) The single further appeal on a point of law referred to in [the 1968 Convention] Article 37, second paragraph and Article 41 in relation to the recognition or enforcement of a maintenance order lies—

- (a) in England and Wales, [to a county court in accordance with section 111A] of the Magistrates' Courts Act 1980;
- (b) in Scotland, to the Inner House of the Court of Session;
- (c) in Northern Ireland, to the Court of Appeal.

Section 6 is omitted by SI 2019/479, reg 14.

[6A Appeals under Article 44 and Annex IV of the Lugano Convention

(1) The single further appeal on a point of law referred to in Article 44 and Annex IV of the Lugano Convention in relation to the recognition or enforcement of a judgment other than a maintenance order lies—

- (a) in England and Wales or Northern Ireland, to the Court of Appeal or to the Supreme Court in accordance with Part II of the Administration of Justice Act 1969 (appeals direct from the High Court to the Supreme Court);
- (b) in Scotland, to the Inner House of the Court of Session.

(2) Paragraph (a) of subsection (1) has effect notwithstanding section 15(2) of the Administration of Justice Act 1969 (exclusion of direct appeal to the Supreme Court in cases where no appeal to that House lies from a decision of the Court of Appeal).

(3) The single further appeal on a point of law referred to in Article 44 and Annex IV of the Lugano Convention in relation to the recognition or enforcement of a maintenance order lies—

- (a) in England and Wales, to a county court in accordance with section 111A of the Magistrates' Courts Act 1980;
- (b) in Scotland, to the Inner House of the Court of Session;
- (c) in Northern Ireland, to the Court of Appeal.]

Section 6A is omitted by SI 2019/479, reg 15.

[6B Appeals in relation to registration of judgments under the 2005 Hague Convention

(1) A decision on the application for registration of a judgment required to be recognised and enforced under the 2005 Hague Convention may be appealed against by either party.

(2) The appeal referred to in subsection (1) lies—

- (a) in England and Wales or Northern Ireland, to the High Court;
- (b) in Scotland, to the Court of Session.

(3) The court to which an appeal referred to in subsection (1) is brought must refuse or revoke registration only if—

- (a) the condition for recognition in Article 8(3) of the 2005 Hague Convention is not met;
- (b) the ground for postponement or refusal of recognition in Article 8(4) of the 2005 Hague Convention applies; or
- (c) one or more of the grounds specified in Article 9 of the 2005 Hague Convention apply.

(4) A single further appeal on a point of law against the judgment given on the appeal referred to in subsection (1) lies—

- (a) in England and Wales or Northern Ireland, to the Court of Appeal or to the Supreme Court in accordance with Part II of the Administration of Justice Act 1969 (appeals direct from the High Court to the Supreme Court);
- (b) in Scotland, to the Inner House of the Court of Session.

(5) Paragraph (a) of subsection (4) has effect notwithstanding section 15(2) of the Administration of Justice Act 1969 (exclusion of direct appeal to the Supreme Court in cases where no appeal to that Court lies from a decision of the Court of Appeal).]

7 Interest on registered judgments

(1) Subject to subsection (4), where in connection with an application for registration of a judgment under section [4, 4A, 4B, 5 or 5A] 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 Contracting 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 any provision made under subsection (2), the debt resulting, apart from section 4(2), from the registration of the judgment shall carry interest in accordance with the registered particulars.

(2) Provision may be made by rules of court as to the manner in which and the periods by reference to which any interest payable by virtue of subsection (1) is to be calculated and paid, including provision for such interest to cease to accrue as from a prescribed date.

(3) Costs or expenses recoverable by virtue of section 4(2) 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.

(4) Interest on arrears of sums payable under a maintenance order registered under section 5 in a magistrates' court in England and Wales or Northern Ireland shall not be recoverable in that court, but without prejudice to the operation in relation to any such order of section 2A of the Maintenance Orders Act 1958 or section 11A of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (which enable interest to be recovered if the order is re-registered for enforcement in the High Court).

(5) Except as mentioned in subsection (4), debts under judgments registered under section [4, 4A, 4B, 5 or 5A] shall carry interest only as provided by this section.

Section 7 as amended by SI 2019/479, reg 16:

(1) [...] Where in connection with an application for registration of a judgment under section [...] 4B] 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 Contracting 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 any provision made under subsection (2), the debt resulting, [...] from the registration of the judgment shall carry interest in accordance with the registered particulars.

(2) Provision may be made by rules of court as to the manner in which and the periods by reference to which any interest payable by virtue of subsection (1) is to be calculated and paid, including provision for such interest to cease to accrue as from a prescribed date.

[...]

(5) [...] Debts under judgments registered under section [...] [4B] shall carry interest only as provided by this section.

8 Currency of payment under registered maintenance orders

(1) Sums payable in the United Kingdom under a maintenance order by virtue of its registration under section 5 [or 5A], including any arrears so payable, shall be paid in the currency of the United Kingdom.

(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 section, a written certificate purporting to be signed

by an officer of any bank in the United Kingdom and stating the exchange rate prevailing on a specified date shall be evidence, and in Scotland sufficient evidence, of the facts stated.

Section 8 is omitted by SI 2019/479, reg 17.

Other supplementary provisions

9 Provisions supplementary to Title VII of 1968 Convention

(1) The provisions of Title VII of the 1968 Convention [and, apart from [Article 64], of Title VII of the Lugano Convention and Article 26 of the 2005 Hague Convention] (relationship between [the Convention in question] and other conventions to which Contracting States are or may become parties) shall have effect in relation to—

- (a) any statutory provision, whenever passed or made, implementing any such other convention in the United Kingdom; and
 - (b) any rule of law so far as it has the effect of so implementing any such other convention,
- as they have effect in relation to that other convention itself.
[...]

Section 9(1) as amended by SI 2019/479, reg 18:

[Provisions supplementary to Article 26 of the 2005 Hague Convention]

(1) [...] [Article 26 of the 2005 Hague Convention] (relationship between [the 2005 Hague Convention] and other conventions to which Contracting States are or may become parties) shall have effect in relation to—

- (a) any statutory provision, whenever passed or made, implementing any such other convention in the United Kingdom; and
 - (b) any rule of law so far as it has the effect of implementing any such other convention,
- as they have effect in relation to that other convention itself.

10 Allocation within UK of jurisdiction with respect to trusts and consumer contracts

(1) The provisions of this section have effect for the purpose of allocating within the United Kingdom jurisdiction in certain proceedings in respect of which the 1968 Convention [or the Lugano Convention] confers jurisdiction on the courts of the United Kingdom generally and to which section 16 does not apply.

(2) Any proceedings which by virtue of Article 5(6) (trusts) are brought in the United Kingdom shall be brought in the courts of the part of the United Kingdom in which the trust is domiciled.

(3) Any proceedings which by virtue of the first paragraph of Article 14 [of the 1968 Convention or Article 16(1) of the Lugano Convention] (consumer contracts) are brought in the United Kingdom by a consumer on the ground that he is himself domiciled there shall be brought in the courts of the part of the United Kingdom in which he is domiciled.

Section 10 is omitted by SI 2019/479, reg 19.

11 Proof and admissibility of certain judgments and related documents

(1) For the purposes of the 1968 Convention [...]—

- (a) a document, duly authenticated, which purports to be a copy of a judgment given by a court of a Contracting State other than the United Kingdom shall without further proof be deemed to be a true copy, unless the contrary is shown; and
- (b) the original or a copy of any such document as is mentioned in Article 46 (2) or 47 (supporting documents to be produced by a party seeking recognition

or enforcement of a judgment) shall be evidence, and in Scotland sufficient evidence, of any matter to which it relates.

[(2) A document purporting to be a copy of an authentic instrument drawn up or registered, and enforceable, in a Contracting State other than the United Kingdom is duly authenticated for the purposes of this section if it purports to be certified to be a true copy of such an instrument by a person duly authorised in that Contracting State to do so.]

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

Section 11 is omitted by SI 2019/479, reg 20.

[11A Proof and admissibility of certain judgments and related documents for the purposes of the Lugano Convention

(1) For the purposes of the Lugano Convention—

(a) a document, duly authenticated, which purports to be a copy of a judgment given by a court of a State bound by the Lugano Convention other than the United Kingdom 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, and in Scotland sufficient evidence, that the judgment is enforceable in the State of origin which is bound by the Lugano Convention.

(2) A document purporting to be a copy of a judgment given by any such court as is mentioned in subsection (1)(a) is duly authenticated for the purposes of this section 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 section shall prejudice the admission in evidence of any document which is admissible apart from this section.]

Section 11A is omitted by SI 2019/479, reg 21.

[11B Proof and admissibility of certain judgments and related documents for the purposes of the 2005 Hague Convention

(1) For the purposes of the 2005 Hague Convention—

(a) a document, duly authenticated, which purports to be a copy of a judgment given by a court of a 2005 Hague Convention State other than the United Kingdom shall without further proof be deemed to be a true copy, unless the contrary is shown; and

(b) a certificate issued by the court of the 2005 Hague Convention State of origin, in the form recommended for use under the 2005 Hague Convention and published by the Hague Conference on Private International Law, as referred to in Article 13(3) of the 2005 Hague Convention, shall be evidence, and in Scotland sufficient evidence, as to whether the judgment has effect or is enforceable in the 2005 Hague Convention State of origin.

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

(a) to bear the seal of that court; or

(b) to be certified by any person in their capacity as judge or officer of that court to be a true copy of a judgment given by that court.

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

12 Provision for issue of copies of, and certificated in connection with, UK Judgments

The Court of Session may by Act of Sederunt make provision for enabling any

interested party wishing to secure under the 1968 Convention [, the Lugano Convention [or the 2005 Hague Convention]] the recognition or enforcement in another Contracting State of a judgment within section 18(2)(c) to obtain, subject to any conditions specified in the rules—

- (a) a copy of the judgment; and
- (b) a certificate giving particulars relating to the judgment [...].

13 Modifications to cover authentic instruments and court settlements.

(1) Her Majesty may by Order in Council provide that—

- (a) any provision of this Act relating to the recognition or enforcement in the United Kingdom or elsewhere of judgments to which the 1968 Convention [...] applies; and
- (b) any other statutory provision, whenever passed or made, so relating, shall apply, with such modifications as may be specified in the Order, in relation to documents and settlements within Title IV of the 1968 Convention [...] (authentic instruments and court settlements enforceable in the same manner as judgments) as if they were judgments to which [the Convention in question] applies.

(2) An Order in Council under this section may make different provision in relation to different descriptions of documents and settlements.

(3) Any Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 13 is omitted by SI 2019/479, reg 23.

14 Modifications consequential on revision of the Conventions

(1) If at any time it appears to Her Majesty in Council that Her Majesty's Government in the United Kingdom have agreed to a revision of [the Lugano Convention or any of the Brussels Conventions], including in particular any revision connected with the accession to [...] the 1968 Convention of one or more further states, Her Majesty may by Order in Council make such modifications of this Act or any other statutory provision, whenever passed or made, as Her Majesty considers appropriate in consequence of the revision.

(2) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

(3) In this section 'revision' means an omission from, addition to or alteration of [...] any of the Brussels Conventions] and includes replacement of any of the Conventions to any extent by another convention, protocol or other description of international agreement.

Section 14 is omitted by SI 2019/479, reg 24.

15 Interpretation of Part I and consequential amendments

(1) In this Part, unless the context otherwise requires—

'judgment' has the meaning given by Article 25 [of the 1968 Convention or, as the case may be, Article 32 of the Lugano Convention [or Article 4(1) of the 2005 Hague Convention]];

'maintenance order' means a maintenance judgment within the meaning of the 1968 Convention [or, as the case may be, the Lugano Convention];

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

'prescribed' means prescribed by rules of court.

(2) References in this Part to a judgment registered under [sections 4, 4A, 4B, 5 or 5A] include, to the extent of its registration, references to a judgment so registered to a limited extent only.

(3) Anything authorised or required by the 1968 Convention, [the Lugano Convention] or this Part to be done by, to or before a particular magistrates' court may

be done by, to or before any magistrates' court acting [in the same local justice area (or, in Northern Ireland, for the same) petty sessions district] as that court.

Section 15 as amended by SI 2019/479, reg 25:

(1) In this Part, unless the context otherwise requires—
'judgment' has the meaning given by [...] [Article 4(1) of the 2005 Hague Convention];

[...]

'prescribed' means prescribed by rules of court.

(2) References in this Part to a judgment registered under [section 4B] include, to the extent of its registration, references to a judgment so registered by to a limited extent only.

(3) Anything authorised or required by [...] this Part to be done by, to or before a particular magistrates' court may be done by, to or before any magistrates' court acting [in the same local justice area (or, in Northern Ireland, for the same) petty sessions district] as that court.

Sections 15A–15E and cross-heading inserted by SI 2019/479, regs 25 and 26.

[Jurisdiction in consumer and employment matters]

[15A Scope of sections 15B to 15E

(1) Sections 15B to 15E make provision about the jurisdiction of courts in the United Kingdom—

(a) in matters relating to consumer contracts where the consumer is domiciled in the United Kingdom;

(b) in matters relating to individual contracts of employment.

(2) Sections 15B and 15C apply only if the subject-matter of the proceedings and the nature of the proceedings are within the scope of the Regulation as determined by Article 1 of the Regulation (whether or not the Regulation would have had effect before exit day in relation to the proceedings).

(3) Sections 15B to 15E do not apply to proceedings of a description listed in Schedule 5 or to proceedings in Scotland under an enactment which confers jurisdiction on a Scottish court in respect of a specific subject-matter on specific grounds.]

[15B Jurisdiction in relation to consumer contracts

(1) This section applies in relation to proceedings whose subject-matter is a matter relating to a consumer contract where the consumer is domiciled in the United Kingdom.

(2) The consumer may bring proceedings against the other party to the consumer contract—

(a) where the other party to the consumer contract is domiciled in the United Kingdom, in the courts of the part of the United Kingdom in which the other party to the consumer contract is domiciled, or

(b) in the courts for the place where the consumer is domiciled (regardless of the domicile of the other party to the consumer contract).

(3) Proceedings may be brought against the consumer by the other party to the consumer contract only in the courts of the part of the United Kingdom in which the consumer is domiciled.

(4) Subsections (2) and (3) are subject to rule 11 of Schedule 4 (and rule 14 of Schedule 4 has effect accordingly).

(5) Subsections (2) and (3) do not affect—

(a) the right (under rule 5(c) of Schedule 4 or otherwise) to bring a counterclaim in the court in which, in accordance with subsection (2) or (3), the original claim is pending,

(b) the operation of rule 3(e) or (h)(ii) of Schedule 4, or
 (c) the operation of any other rule of law which permits a person not domiciled in the United Kingdom to be sued in the courts of a part of the United Kingdom.

(6) Subsections (2) and (3) may be departed from only by an agreement—

(a) which is entered into after the dispute has arisen,

(b) which allows the consumer to bring proceedings in courts other than those indicated in this section, or

(c) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the United Kingdom and in the same part of the United Kingdom, and which confers jurisdiction on the courts of that part of the United Kingdom, provided that such an agreement is not contrary to the law of that part of the United Kingdom.

(7) For the purposes of this section, where a consumer enters into a consumer contract with a party who is not domiciled in the United Kingdom, the other party to the contract is deemed to be domiciled in a particular part of the United Kingdom if that party has a branch, agency or establishment in that part of the United Kingdom and the dispute arose out of the operations of that branch, agency or establishment.]

[15C Jurisdiction in relation to individual contracts of employment

(1) This section applies in relation to proceedings whose subject-matter is a matter relating to an individual contract of employment.

(2) The employer may be sued by the employee—

(a) where the employer is domiciled in the United Kingdom, in the courts for the part of the United Kingdom in which the employer is domiciled,

(b) in the courts for the place in the United Kingdom where or from where the employee habitually carries out the employee's work or last did so (regardless of the domicile of the employer), or

(c) if the employee does not or did not habitually carry out the employee's work in any one part of the United Kingdom [or any one overseas country], in the courts for the place in the United Kingdom where the business which engaged the employee is [or was] situated (regardless of the domicile of the employer).

(3) If the employee is domiciled in the United Kingdom, the employer may only sue the employee in the part of the United Kingdom in which the employee is domiciled (regardless of the domicile of the employer).

(4) Subsections (2) and (3) are subject to rule 11 of Schedule 4 (and rule 14 of Schedule 4 has effect accordingly).

(5) Subsections (2) and (3) do not affect—

(a) the right (under rule 5(c) of Schedule 4 or otherwise) to bring a counterclaim in the court in which, in accordance with subsection (2) or (3), the original claim is pending,

(b) the operation of rule 3(e) of Schedule 4,

(c) the operation of rule 5(a) of Schedule 4 so far as it permits an employer to be sued by an employee, or

(d) the operation of any other rule of law which permits a person not domiciled in the United Kingdom to be sued in the courts of a part of the United Kingdom.

(6) Subsections (2) and (3) may be departed from only by an agreement which—

(a) is entered into after the dispute has arisen, or

(b) allows the employee to bring proceedings in courts other than those indicated in this section.

(7) For the purposes of this section, where an employee enters into an

individual contract of employment with an employer who is not domiciled in the United Kingdom, the employer is deemed to be domiciled in the relevant part of the United Kingdom if the employer has a branch, agency or other establishment in that part of the United Kingdom and the dispute arose from the operation of that branch, agency or establishment.]

[15D Further provision as to jurisdiction

(1) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of section 15B(6) or 15C(6).

(2) Even if it would not otherwise have jurisdiction under section 15B or 15C, a court of a part of the United Kingdom before which a defendant enters an appearance has jurisdiction in those proceedings.

(3) Subsection (2) does not apply where —

- (a) appearance was entered to contest the jurisdiction, or
- (b) another court in the United Kingdom has exclusive jurisdiction by virtue of rule 11 of Schedule 4.

(4) Subsection (2) does not apply if the defendant is the consumer or employee in relation to the subject-matter of the proceedings, unless the defendant is informed by the court of—

- (a) the defendant's right to contest the jurisdiction, and
- (b) the consequences of entering or not entering an appearance.

(5) Subsection (6) applies where—

- (a) a defendant domiciled in the United Kingdom is sued in a court of a part of the United Kingdom other than the part in which the defendant is domiciled and does not enter an appearance, and
- (b) the subject-matter of the proceedings is a matter in relation to which section 15B or 15C applies.

(6) The court must—

- (a) declare of its own motion that it has no jurisdiction, unless it has jurisdiction by virtue of section 15B or 15C or a rule referred to in section 15B(4) or (5) or 15C(4) or (5);

(b) stay the proceedings so long as it is not shown that—

- (i) the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable the defendant to arrange for the defendant's defence, or
- (ii) all necessary steps have been taken to this end.

(7) Application may be made to the courts of a part of the United Kingdom for such provisional, including protective, measures as may be available under the law of that part, even if, by virtue of section 15B or 15C or this section, the courts of another part of the United Kingdom have jurisdiction as to the substance of the matter.]

[15E Interpretation

(1) In sections 15A to 15D and this section—

“consumer”, in relation to a consumer contract, means a person who concludes the contract for a purpose which can be regarded as being outside the person's trade or profession;

‘consumer contract’ means—

- (a) a contract for the sale of goods on instalment credit terms,
- (b) a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
- (c) a contract which has been concluded with a person who—
 - (i) pursues commercial or professional activities in the part of the United Kingdom in which the consumer is domiciled, or
 - (ii) by any means, directs such activities to that part or to other parts of the United Kingdom including that part,
 and which falls within the scope of such activities,

but it does not include a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation or a contract of insurance,

'defendant' includes defender.

(2) In determining any question as to the meaning or effect of any provision contained in sections 15A to 15D and this section—

(a) regard is to be had to any relevant principles laid down before exit day by the European Court in connection with Title II of the 1968 Convention or Chapter 2 of the Regulation and to any relevant decision of that court before exit day as to the meaning or effect of any provision of that Title or Chapter, and

(b) without prejudice to the generality of paragraph (a), the expert reports relating to the 1968 Convention may be considered and are, so far as relevant, to be given such weight as is appropriate in the circumstances.]

PART II JURISDICTION, AND RECOGNITION AND ENFORCEMENT OF JUDGMENTS, WITHIN UNITED KINGDOM

[Jurisdiction in other civil proceedings]

16 Allocation within UK of jurisdiction in certain civil proceedings

(1) The provisions set out in Schedule 4 (which contains a modified version of [Chapter II of the Regulation]) shall have effect for determining, for each part of the United Kingdom, whether the courts of law of that part, or any particular court of law in that part, have or has jurisdiction in proceedings where—

(a) [the subject-matter of the proceedings 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) the defendant or defender is domiciled in the United Kingdom or the proceedings are of a kind mentioned in [Article [24] of the Regulation] (exclusive jurisdiction regardless of domicile).

[...]

(3) In determining any question as to the meaning or effect of any provision contained in Schedule 4—

(a) regard shall be had to any relevant principles laid down by the European Court in connection with Title II of the 1998 Convention [or Chapter II of the Regulation] and to any relevant decision of that court as to the meaning or effect of any provision of that Title [or that Chapter]; and

(b) without prejudice to the generality of paragraph (a), the reports mentioned in section 3(3) may be considered and shall, so far as relevant, be given such weight as is appropriate in the circumstances.

(4) The provisions of this section and Schedule 4 shall have effect subject to [the Regulation, Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011,] the 1968 Convention [, the Lugano Convention [and the 2005 Hague Convention]] and to the provisions of section 17.

[...]

Section 16 as amended by SI 2019/479, reg 28:

(1) The provisions set out in Schedule 4 (which contains a modified version of Chapter II of the Regulation) shall have effect for determining, for each part of the United Kingdom, whether the courts of law of that part, or any particular court of law in that part, have or has jurisdiction in proceedings where—

(a) the subject-matter of the proceedings is within the scope of the Regulation as determined by Article 1 of the Regulation (whether or not the Regulation [would have had effect before exit day] in relation to the proceedings); and

(b) the defendant or defender is domiciled in the United Kingdom or the

proceedings are of a kind mentioned in Article 22 of the Regulation (exclusive jurisdiction regardless of domicile).

[1A) This section and Schedule 4 do not apply for the purposes of determining jurisdiction in proceedings in relation to which section 15B, 15C or 15D(2) applies, except as specified in those sections.]

(3) In determining any question as to the meaning or effect of any provision contained in Schedule 4—

(a) regard shall be had to any relevant principles laid down by the European Court in connection with Title II of the 1998 Convention or Chapter II of the Regulation and to any relevant decision of that court as to the meaning or effect of any provision of that Title or that Chapter; and

(b) without prejudice to the generality of paragraph (a), [the expert reports relating to the 1968 Convention] may be considered and shall, so far as relevant, be given such weight as is appropriate in the circumstances.

[(3A) The requirement in subsection (3)(a) applies only in relation to principles laid down, or decisions made, by the European Court before exit day.]

(4) The provisions of this section and Schedule 4 shall have effect subject to [...] [the 2005 Hague Convention] and to the provisions of [sections 15B, 15C, 15D and 17].

17 Exclusion of certain proceedings from Schedule 4

(1) Schedule 4 shall not apply to proceedings of any description listed in Schedule 5 or to proceedings in Scotland under any enactment which confers jurisdiction on a Scottish court in respect of a specific subject-matter on specific grounds.

(2) Her Majesty may by Order in Council—

(a) add to the list in Schedule 5 any description of proceedings in any part of the United Kingdom; and

(b) remove from that list any description of proceedings in any part of the United Kingdom (whether included in the list as originally enacted or added by virtue of this subsection).

(3) An Order in Council under subsection (2)—

(a) may make different provisions for different descriptions of proceedings, for the same description of proceedings in different courts or for different parts of the United Kingdom; and

(b) may contain such transitional and other incidental provisions as appear to Her Majesty to be appropriate.

(4) An Order in Council under subsection (2) shall not be made unless a draft of the Order has been laid before parliament and approved by a resolution of each House of Parliament.

[Recognition of Judgments]

18 Enforcement of UK judgments in other parts of UK

(1) In relation to any judgment to which this section applies—

(a) Schedule 6 shall have effect for the purpose of enabling any money provisions contained in the judgments to be enforced in a part of the United Kingdom other than the part in which the judgment was given; and

(b) Schedule 7 shall have effect for the purpose of enabling any non-money provisions so contained to be so enforced.

(2) In this section ‘judgment’ means any of the following (references to the giving of a judgment being construed accordingly)—

(a) any judgment or order (by whatever name called) given or made by a court of law in the United Kingdom;

(b) any judgment or order not within paragraph (a) which has been entered in England and Wales or Northern Ireland in the High Court or a county court;

(c) any document which the Scotland has been registered for execution in the Books of Council and Session or in the sheriff court books kept for any sheriffdom;

(d) any award or order made by a tribunal in any part of the United Kingdom which is enforceable in that part without an order of a court of law;

(e) an arbitration award which has become enforceable in the part of the United Kingdom in which it was given in the same manner as a judgment given by a court of law in that part;

[(f) an order made, or a warrant issued, under Part 8 of the Proceeds of Crime Act 2002 for the purposes of a civil recovery investigation [or a detained cash investigation] within the [meanings] given by section 341 of that Act;]

and, subject to the following provisions of this section, this section applies to all such judgments.

(3) Subject to subsection (4), this section does not apply to—

(a) a judgment given in proceedings in a magistrates' court in England and Wales or Northern Ireland;

(b) a judgment given in proceedings other than the civil proceedings;

[(ba) a judgment given in the exercise of jurisdiction in relation to insolvency law, within the meaning of section 426 of the Insolvency Act 1986;]

(c) a judgment given in proceedings relating to—

[...]

(iii) the obtaining of title to administer the estate of a deceased person;

(d) an order made under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (confiscation).

(4) This section applies, whatever the nature of the proceedings in which it is made, to—

(a) a decree issued under section 13 of the Court of Exchequer (Scotland) Act 1856 (recovery of certain rent-charges and penalties by process of the Court of Session);

(b) an order which is enforceable in the same manner as a judgment of the High Court in England and Wales by virtue of section 16 of the Contempt of Court Act 1981 or section 140 of the Supreme Court Act 1981 (which relate to fines for contempt of court and forfeiture of recognisances).

[(4A) This section does not apply as respects—

(a) the enforcement in Scotland of orders made by the High Court or a county court in England and Wales under or for the purposes of Part VI of the Criminal Justice Act 1988 or the Drug Trafficking Act 1994 (confiscation of the proceeds of certain offences or of drug trafficking); or

(b) the enforcement in England and Wales of orders made by the Court of Session or by the sheriff under or for the purposes of the Proceeds of Crime (Scotland) Act 1995.]

(5) This section does not apply to so much of any judgment as—

(a) is an order to which section 16 of the Maintenance Orders Act 1950 applies (and is therefore an order for whose enforcement in another part of the United Kingdom provision is made by Part II of that Act);

(b) concerns the status or legal capacity of an individual;

(c) relates to the management of the affairs of a person not capable of managing his own affairs;

(d) is a provisional (including protective) measure other than an order for the making of an interim payment;

and except where otherwise stated references to a judgment to which this section applies are to such a judgment exclusive of any such provisions.

(6) The following are within subsection (5)(b), but without prejudice to the generality of that provision—

(a) a decree of judicial separation or of separation;

(b) [any order which is a Part I order for the purposes of the Family Law Act 1986].

[(6A) In subsection (5)(d), ‘an interim order made in connection with the civil recovery of proceeds of unlawful conduct’ means any of the following made under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002—

(a) a property freezing order or prohibitory property order;

(b) an order under section 245E or 245F of that Act (order relating to receivers in connection with property freezing order);

(c) an interim receiving order or interim administration order;]

[(d) an order under section 255G or 255H of that Act (order relating to PPO receivers in connection with prohibitory property order).]

(7) This section does not apply to a judgment of a court outside the United Kingdom which falls to be treated for the purposes of its enforcement as a judgment of a court of law in the United Kingdom by virtue of registration under Part II of the Administration of Justice Act 1920, Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933, Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 or section 4 or 5 of this Act [or by virtue of the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011].

(8) A judgment to which this section applies, other than a judgment within paragraph (e) of subsection (2), shall not be enforced in another part of the United Kingdom except by way of registration under Schedule 6 or 7.

Section 18(7) as amended by SI 2019/419, reg 30:

(7) This section does not apply to a judgment of a court outside the United Kingdom which falls to be treated for the purposes of its enforcement as a judgment of a court of law in the United Kingdom by virtue of registration under Part II of the Administration of Justice Act 1920, Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933, Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 [...].

19 Recognition of UK judgments in other parts of UK

(1) A judgment to which this section applies given in one part of the United Kingdom shall not be refused recognition in another part of the United Kingdom solely on the ground that, in relation to that judgment, the court which gave it was not a court of competent jurisdiction according to the rules of private international law in force in that other part.

(2) Subject to subsection (3), this section applies to any judgment to which section 18 applies.

(3) This section does not apply to—

(a) the documents mentioned in paragraph (c) of the definition of ‘judgment’ in section 18(2);

(b) the awards and orders mentioned in paragraphs (d) and (e) of that definition;

(c) the decrees and orders referred to in section 18(4).

PART III
JURISDICTION IN SCOTLAND

20 Rules as to jurisdiction in Scotland

(1) Subject to [the Regulation, to] Parts I and II and to the following provisions of this Part, Schedule 8 has effect to determine in what circumstances a person may be sued in civil proceedings in the Court of Session or in a sheriff court.

(2) Nothing in Schedule 8 affects the competence as respects subject-matter or value of the Court of Session or of the sheriff court.

(3) Section 6 of the Sheriff Courts (Scotland) Act 1907 shall cease to have effect—

[(a)] to the extent that it determines jurisdiction in relation to any matter to which Schedule 8 applies [; and

(b) to the extent that it relates to any matter where jurisdiction falls to be determined by reference to the jurisdictional requirements of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011.]

[...]

(5) In determining any question as to the meaning or effect of any provision contained in Schedule 8—

(a) regard shall be had to any relevant principles laid down by the European Court in connection with Title II of the 1968 Convention [or Chapter II of the Regulation] and to any relevant decision of that court as to the meaning or effect of any provision of that Title [or that Chapter]; and

(b) without prejudice to the generality of paragraph (a), the reports mentioned in section 3(3) may be considered and shall, so far as relevant, be given such weight as is appropriate in the circumstances.

Section 20 as amended by SI 2019/479, reg 31:

(1) Subject to [...] Parts I and II and to the following provisions of this Part, Schedule 8 has effect to determine in what circumstances a person may be sued in civil proceedings in the Court of Session or in a sheriff court.

(2) Nothing in Schedule 8 affects the competence as respects subject-matter or value of the Court of Session or of the sheriff court.

(3) Section 6 of the Sheriff Courts (Scotland) Act 1907 shall cease to have effect—

[(a)] to the extent that it determines jurisdiction in relation to any matter to which Schedule 8 applies.

[...]

[...]

(5) In determining any question as to the meaning or effect of any provision contained in Schedule 8—

(a) regard shall be had to any relevant principles laid down by the European Court in connection with Title II of the 1968 Convention [or Chapter II of the Regulation] and to any relevant decision of that court as to the meaning or effect of any provision of that Title or that Chapter; and

(b) without prejudice to the generality of paragraph (a), [the expert reports relating to the 1968 Convention] may be considered and shall, so far as relevant, be given such weight as is appropriate in the circumstances.

[(6) The requirement in subsection (5)(a) applies only in relation to principles laid down, or decisions made, by the European Court before exit day.]

21 Continuance of certain existing jurisdictions

(1) Schedule 8 does not affect—

(a) the operation of any enactment which confers jurisdiction on a Scottish court in respect of a specific subject-matter on specific grounds;

(b) without prejudice to the foregoing generality, the jurisdiction of any court in respect of any matter mentioned in Schedule 9.

(2) Her Majesty may by Order in Council—

(a) add to the list in Schedule 9 any description of proceedings; and

(b) remove from that list any description of proceedings (whether included in the list as originally enacted or added by virtue of this subsection).

(3) An Order in Council under subsection (2) may—

(a) make different provision for different descriptions of proceedings or for the same description of proceedings in different courts; and

(b) contain such transitional and other incidental provisions as appear to Her Majesty to be appropriate.

(4) An Order in Council under subsection (2) shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

22 Supplementary provision

(1) Nothing in Schedule 8 shall prevent a court from declining jurisdiction on the ground of forum non conveniens.

(2) Nothing in Schedule 8 affects the operation of any enactment or rule of law under which a court may decline to exercise jurisdiction because of the prorogation by parties of the jurisdiction of another court.

(3) For the avoidance of doubt, it is declared that nothing in Schedule 8 affects the nobile officium of the Court of Session.

(4) Where a court has jurisdiction in any proceedings by virtue of Schedule 8, that court shall also have jurisdiction to determine any matter which—

- (a) is ancillary or incidental to the proceedings; or
- (b) requires to be determined for the purposes of a decision in the proceedings.

23 Savings and consequential amendments

(1) Nothing in Schedule 8 shall affect—

- (a) the power of any court to vary or recall a maintenance order granted by the court;
 - (b) the power of a sheriff court under section 22 of the Maintenance Orders Act 1950 (discharge and variation of maintenance orders registered in sheriff courts) to vary or discharge a maintenance order registered in that court under Part II of that Act; or
 - (c) the power of a sheriff court under section 9 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (variation and revocation of maintenance orders registered in United Kingdom courts) to vary or revoke a registered order within the meaning of Part I of that Act.
- (2) *[Amending provisions.]*

PART IV MISCELLANEOUS PROVISIONS

Provisions relating to jurisdiction

...

27 Provisional and protective measures in Scotland in the absence of substantive proceedings

(1) The Court of Session may, in any case to which this subsection applies—

- (a) subject to subsection (2)(c), grant a warrant for the arrestment of any assets situated in Scotland;
- (b) subject to subsection (2)(c), grant a warrant of inhibition over any property situated in Scotland; and
- [(ba) subject to subsection (2)(c) below, grant a warrant for the interim attachment of corporeal moveable property situated in Scotland;]
- (c) grant interim interdict.

(2) Subsection (1) applies to any case in which—

- (a) proceedings have been commenced but not concluded, or, in relation to paragraph (c) of that subsection, are to be commenced, in another [Brussels or Lugano Contracting State], in another Regulation State [, in another Maintenance Regulation State [, in another Hague Convention State]] or in England and Wales or Northern Ireland;
- (b) [the subject-matter of the proceedings is within the scope of the Regulation as determined by Article 1 of the Regulation [, is within the scope of the

Maintenance Regulation as determined by Article 1 of that Regulation [or is within the scope of the 2005 Hague Convention as determined by Articles 1 and 2 of that Convention]; and]

(c) in relation to paragraphs (a) [, (b) and (ba)] of subsection (1), such a warrant could competently have been granted in equivalent proceedings before a Scottish court;

but it shall not be necessary, in determining whether proceedings have been commenced for the purpose of paragraph (a) of this subsection, to show that any document has been served on or notice given to the defender.

(3) Her Majesty may by Order in Council confer on the Court of Session power to do anything mentioned in subsection (1) or in section 28 in relation to proceedings of any of the following descriptions, namely—

(a) proceedings commenced otherwise than in a [Brussels, Lugano Contracting State [, Regulation State or Maintenance Regulation State [or a 2005 Hague Convention State]]];

(b) [proceedings whose subject-matter is not within the scope of the Regulation as determined by Article 1 of the Regulation [or the Maintenance Regulation as determined by Article 1 of that Regulation [or the 2005 Hague Convention as determined by Articles 1 and 2 of that Convention]]];

(c) arbitration proceedings;

(d) in relation to subsection (1)(c) or section 28, proceedings which are to be commenced otherwise than in a [Brussels or Lugano Contracting State [, Regulation State, Maintenance Regulation State [or a 2005 Hague Convention State]]].

(4) An Order in Council under subsection (3)—

(a) may confer power to do only certain of the things mentioned in subsection (1) or in section 28;

(b) may make different provision for different classes of proceedings, for proceedings pending in different countries or courts outside the United Kingdom or in different parts of the United Kingdom, and for other different circumstances; and

(c) may impose conditions or restrictions on the exercise of any power conferred by the Order.

(5) Any Order in Council under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 27(2) and (3) as amended by SI 2019/479, reg 34 and SI 2019/519, reg 12(8):

(2) Subsection (1) applies to any case in which—

(a) proceedings have been commenced but not concluded, or, in relation to paragraph (c) of that subsection, are to be commenced [...] [in another Hague Convention State] or in England and Wales or Northern Ireland;

(b) [the subject-matter of the proceedings [...] [is within the scope of the 2005 Hague Convention as determined by Articles 1 and 2 of that Convention]; and]

(c) in relation to paragraphs (a), [(b) and (ba)] of subsection (1), such a warrant could competently have been granted in equivalent proceedings before a Scottish court;

but it shall not be necessary, in determining whether proceedings have been commenced for the purpose of paragraph (a) of this subsection, to show that any document has been served on or notice given to the defender.

(3) Her Majesty may by Order in Council confer on the Court of Session power to do anything mentioned in subsection (1) or in section 28 in relation to proceedings of any of the following descriptions, namely—

(a) proceedings commenced otherwise than in [...] [a 2005 Hague Convention State];

(b) [proceedings whose subject-matter is not within the scope of [...] [the 2005 Hague Convention as determined by Articles 1 and 2 of that Convention]];

- (c) arbitration proceedings;
- (d) in relation to subsection (1)(c) or section 28, proceedings which are to be commenced otherwise than [...] [a Hague Convention State].

28 Application of s 1 of Administration of Justice (Scotland) Act 1972

[(1)] When any proceedings have been brought, or are likely to be brought, in another [Brussels or Lugano Contracting State, in a Regulation State [, in a 2005 Hague Convention State]] or in England and Wales or Northern Ireland in respect of any matter which is within the scope of the [Regulation] as determined in Article 1, the Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 [as amended by the Law Reform (Miscellaneous Provisions)(Scotland) Act 1985] as if the proceedings in question had been brought, or were likely to be brought, in that court.

[(2)] When any proceedings have been brought or are likely to be brought in another Maintenance Regulation State or in England and Wales or Northern Ireland in respect of any matter which is within the scope of the Maintenance Regulation as determined by Article 1 of that Regulation, the Court of Session has the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 as if the proceedings in question had been brought, or were likely to be brought, in that court.]

Section 28 as amended by SI 2019/479, reg 35 and SI 2019/519, reg 12(9):

[(1)] When any proceedings have been brought, or are likely to be brought, [...] [in a 2005 Hague Convention State] or in England and Wales or Northern Ireland in respect of any matter which is within the scope of the [Regulation] as determined in Article 1, the Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 [as amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985] as if the proceedings in question had been brought, or were likely to be brought, in that court.

30 Proceedings in England and Wales or Northern Ireland for torts to immovable property

(1) The jurisdiction of any court in England and Wales or Northern Ireland to entertain proceedings for trespass to, or any other tort affecting, immovable property shall extend to cases in which the property in question is situated outside that part of the United Kingdom unless the proceedings are principally concerned with a question of the title to, or the right to possession of, that property.

(2) Subsection (1) has effect subject to the 1968 Convention [and the Lugano Convention and the Regulation] and to the provisions set out in Schedule 4.

Section 30(2) as amended by SI 2019/479, reg 36:

- (2) Subsection (1) has effect subject to [...] the provisions set out in Schedule 4.

Provisions relating to recognition and enforcement of judgments

31 Overseas judgments given against states, etc

(1) A judgment given by a court of an overseas country against a state other than the United Kingdom or the state to which that court belongs shall be recognised and enforced in the United Kingdom if, and only if—

- (a) it would be so recognised and enforced if it had not been given against a state; and

- (b) that court would have had jurisdiction in the matter if it had applied rules corresponding to those applicable to such matters in the United Kingdom in accordance with sections 2 to 11 of the State Immunity Act 1978.

(2) References in subsection (1) to a judgment given against a state include

references to judgments of any of the following descriptions given in relation to a state—

(a) judgments against the government, or a department of the government, of the state but not (except as mentioned in paragraph (c)) judgments against an entity which is distinct from the executive organs of government;

(b) judgments against the sovereign or head of state in his public capacity;

(c) judgments against any such separate entity as is mentioned in paragraph (a) given in proceedings relating to anything done by it in the exercise of the sovereign authority of the state.

(3) Nothing in subsection (1) shall affect the recognition or enforcement in the United Kingdom of a judgment to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies by virtue of section 4 of the Carriage of Goods by Road Act 1965, section 17(4) of the Nuclear Installations Act 1965, section [166 (4) of the Merchant Shipping Act 1995, regulation 8 of the Railways (Convention on International Carriage by Rail Regulations 2005] or section 5 of the Carriage of Passengers by Road Act 1974.

(4) Sections 12, 13 and 14(3) and (4) of the State Immunity Act 1978 (service of process and procedural privileges) shall apply to proceedings for the recognition or enforcement in the United Kingdom of a judgment given by a court of an overseas country (whether or not that judgment is within subsection (1) of this section) as they apply to other proceedings.

(5) In this section 'state', in the case of a federal state, includes any of its constituent territories.

32 Overseas judgments given in proceedings brought in breach of agreement for settlement of disputes

(1) Subject to the following provisions of this section, a judgment given by a court of an overseas country in any proceedings shall not be recognised or enforced in the United Kingdom if—

(a) the bringing of those proceedings in that court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of that country; and

(b) those proceedings were not brought in that court by, or with the agreement of, the person against whom the judgment was given; and

(c) that person did not counter claim in the proceedings or otherwise submit to the jurisdiction of that court.

(2) Subsection (1) does not apply where the agreement referred to in paragraph (a) of the subsection was illegal, void or unenforceable or was incapable of being performed for reasons not attributable to the fault of the party bringing the proceedings in which the judgment was given.

(3) In determining whether a judgment given by a court of an overseas country should be recognised or enforced in the United Kingdom, a court in the United Kingdom shall not be bound by any decision of the overseas court relating to any of the matters mentioned in subsection (1) or (2).

(4) Nothing in subsection (1) shall affect the recognition or enforcement in the United Kingdom of—

(a) a judgment which is required to be recognised or enforced there under [the 2005 Hague Convention,] the 1968 Convention [or the Lugano Convention or the Regulation [or the Maintenance Regulation]];

(b) a judgment to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies by virtue of section 4 of the Carriage of Goods by Road Act 1965, section 17(4) of the Nuclear Installations Act 1965, [regulation 8 of the Railways (Convention on International Carriage by Rail) Regulations 2005] or section 5 of the Carriage of Passengers by Road Act 1974 or section 177(4) of the Merchant Shipping Act 1995.

Section 32(4)(a) as amended by SI 2019/479, reg 37 and SI 2019/519; reg 12:

(4) Nothing in subsection (1) shall affect the recognition or enforcement in the United Kingdom of—

- (a) a judgment which is required to be enforced there under [the 2005 Hague Convention]
[...];

33 Certain steps not to amount to submission to jurisdiction of overseas court

(1) For the purposes of determining whether a judgments given by a court of an overseas country should be recognised or enforced in England and Wales or Northern Ireland, the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of the court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes, namely—

- (a) to contest the jurisdiction of the court;
(b) to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country;
(c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings.

(2) Nothing in this section shall affect the recognition or enforcement in England and Wales or Northern Ireland of a judgment which is required to be recognised or enforced there under the 1968 Convention [or the Lugano Convention or the Regulation [or the Maintenance Regulation [or the 2005 Hague Convention]]].

Section 33(2) as amended by SI 2019/479, reg 38 and SI 2019/519, reg 12:

(2) Nothing in this section shall affect the recognition or enforcement in England and Wales or Northern Ireland of a judgment which is required to be recognised or enforced there under [...] [the 2005 Hague Convention].

34 Certain judgments a bar to further proceedings on the same cause of action

No proceedings may be brought by a person in England and Wales or Northern Ireland on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in another part of the United Kingdom or in a court of an overseas country, unless that judgment is not enforceable or entitled to recognition in England and Wales or, as the case may be, in Northern Ireland.

PART V
SUPPLEMENTARY AND GENERAL PROVISIONS

Domicile

41 Domicile of individuals

(1) Subject to Article 52 (which contains provisions for determining whether a party is domiciled in a Contracting State), the following provisions of this section determine, for the purposes of the 1968 Convention [...] and this Act, whether an individual is domiciled in the United Kingdom or in a particular part of, or place in, the United Kingdom or in a state other than a Contracting State.

- (2) An individual is domiciled in the United Kingdom if and only if—
(a) he is resident in the United Kingdom; and
(b) the nature and circumstances of this residence indicate that he has a substantial connection with the United Kingdom.

(3) Subject to subsection (5), an individual is domiciled in a particular part of the United Kingdom if and only if—

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

(4) An individual is domiciled in a particular place in the United Kingdom if and only if he—

- (a) is domiciled in the part of the United Kingdom in which that place is situated; and
- (b) is resident in that place.

(5) An individual who is domiciled in the United Kingdom but in whose case the requirements of subsection (3)(b) are not satisfied in relation to any particular part of the United Kingdom shall be treated as domiciled in the part of the United Kingdom in which he is resident.

(6) In the case of an individual who—

- (a) is resident in the United Kingdom, or in a particular part of the United Kingdom; and
 - (b) has been so resident for the last three months or more,
- the requirements of subsection (2)(b) or, as the case may be, subsection (3)(b) shall be presumed to be fulfilled unless the contrary is proved.

(7) An individual is domiciled in a state other than a Contracting 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.

Section 41(1) as amended by SI 2019/479, reg 39:

(1) [...] The following provisions of this section determine, for the purposes of [...] this Act, whether an individual is domiciled in the United Kingdom or in a particular part of, or place in, the United Kingdom [...].

Section 41(7) is omitted by SI 2019/479, reg 39.

[41A Domicile of individuals for the purposes of the Lugano Convention

(1) Subject to Article 59 of the Lugano Convention (which contains provisions for determining whether a party is domiciled in a State bound by the Lugano Convention), the following provisions of this section determine, for the purposes of the Lugano Convention, whether an individual is domiciled in the United Kingdom or in a particular part of, or place in, the United Kingdom or in a state other than a State bound by the Lugano Convention.

(2) An individual is domiciled in the United Kingdom if and only if—

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

(3) Subject to subsection (5), an individual is domiciled in a particular part of the United Kingdom if and only if—

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

(4) An individual is domiciled in a particular place in the United Kingdom if and only if he—

- (a) is domiciled in the part of the United Kingdom in which that place is situated; and
- (b) is resident in that place.

(5) An individual who is domiciled in the United Kingdom but in whose case the requirements of subsection (3)(b) are not satisfied in relation to any particular

part of the United Kingdom shall be treated as domiciled in the part of the United Kingdom in which he is resident.

(6) In the case of an individual who—

(a) is resident in the United Kingdom, or in a particular part of the United Kingdom; and

(b) has been so resident for the last three months or more, the requirements of subsection (2)(b) or, as the case may be, subsection (3)(b) shall be presumed to be fulfilled unless the contrary is proved.

(7) An individual is domiciled in a state other than a State bound by the Lugano Convention 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.]

Section 41A is omitted by SI 2019/479, reg 40.

42 Domicile and seat of corporation or association

(1) For the purposes of this Act the seat of a corporation or association (as determined by this section) shall be treated as its domicile.

(2) The following provisions of this section determine where a corporation or association has its seat—

(a) for the purpose of Article 53 (which for the purposes of the 1968 Convention [...] equates the domicile of such a body with its seat); and

(b) for the purposes of this Act other than the provisions mentioned in section 43(1)(b) and (c).

(3) A corporation or association has its seat in the United Kingdom, if and only if—

(a) it was incorporated or formed under the law of a part of the United Kingdom and has its registered office or some other official address in the United Kingdom; or

(b) its central management and control is exercised in the United Kingdom.

(4) A corporation or association has its seat in a particular part of the United Kingdom if and only if it has its seat in the United Kingdom and—

(a) it has its registered office or some other official address in that part; or

(b) its central management and control is exercised in that part; or

(c) it has a place of business in that part.

(5) A corporation or association has its seat in a particular place in the United Kingdom if and only if it has its seat in the part of the United Kingdom in which that place is situated and—

(a) it has its registered office or some other official address in that place; or

(b) its central management and control is exercised in that place; or

(c) it has a place of business in that place.

(6) Subject to subsection (7), a corporation or association has its seat in a state other than the United Kingdom if and only if—

(a) it was incorporated or formed under the law of that state and has its registered office or some other official address there; or

(b) its central management and control is exercised in that state.

(7) A corporation or association shall not be regarded as having its seat in a Contracting State other than the United Kingdom if it is shown that the courts of that state would not regard it as having its seat there.

(8) In this section—

Section 42(2)(a), and s 42(7) are omitted by SI 2019/479, reg 41. Subsections (4A) and (6A) are added:

[(4A) For the purposes of sections 15A to 15E and rules, 1, 2, 3, 5, 11(a)(ii) and 15(1) in Schedule 4, the requirement in subsection (4) that a corporation or

association has its seat in the United Kingdom is to be treated as satisfied if the corporation or association satisfies the requirement in section 42A(2) for having its domicile in the United Kingdom.]

[(6A) Subsections (1), (3) and (6) are subject to section 42A.]

Section 42A is inserted by SI 2019/479, reg 42:

[42A Domicile of corporation or association for purposes of certain civil proceedings

(1) This section determines whether a corporation or association is domiciled in the United Kingdom for the purposes of—

- (a) sections 15A to 15E, and
- (b) section 16(1)(b).

(2) A corporation or association has its domicile in the United Kingdom if and only if—

- (a) its registered office is at a place in the United Kingdom,
- (b) its place of incorporation is in the United Kingdom (in a case where it has no registered office),
- (c) the place under the law of which its formation took place is a place in the United Kingdom (in a case where it has no registered office or place of incorporation),
- (d) its central administration is in the United Kingdom, or
- (e) its principal place of business is in the United Kingdom.]

43 Seat of corporation or association for purposes of Article 16(2) and related provisions

(1) The following provisions of this section determine where a corporation or association has its seat for the purposes of—

- (a) Article 16(2) [of the 1968 Convention ...] (which confers exclusive jurisdiction over proceedings relating to the formation or dissolution of such bodies, or to the decisions of their organs);
- (b) [rules 4 and 11(b)] in Schedule 4; and
- (c) [rules 2(1) and 5(1)(b)] in Schedule 8.

(2) A corporation or association has its seat in the United Kingdom if and only if—

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

(3) A corporation or association has its seat in a particular part of the United Kingdom if and only if it has its seat in the United Kingdom and—

- (a) subject to subsection (5), it was incorporated or formed under the law of that part; or
- (b) being incorporated or formed under the law of a state other than the United Kingdom, its central management and control is exercised in that part.

(4) A corporation or association has its seat in a particular place in Scotland if and only if it has its seat in Scotland and—

- (a) it has its registered office or some other official address in that place; or
- (b) it has no registered office or other official address in Scotland, but its central management and control is exercised in that place.

(5) A corporation or association incorporated or formed under—

- (a) an enactment forming part of the law of more than one part of the United Kingdom; or
- (b) an instrument having effect in the domestic law of more than one part of the United Kingdom,

shall, if it has a registered office, be taken to have its seat in the part of the United Kingdom in which that office is situated, and not in any other part of the United Kingdom.

(6) Subject to subsection (7), a corporation or association has its seat in a Contracting State other than the United Kingdom 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.

(7) A corporation or association shall not be regarded as having its seat in a Contracting State other than the United Kingdom if—

- (a) it has its seat in the United Kingdom by virtue of subsection (2)(a); or
- (b) it is shown that the courts of that other state would not regard it for the purposes of Article 16(2) as having its seat there.

(8) In this section ‘official address’ has the same meaning as in section 42.

Section 43 is amended by SI 2019/479, reg 43.

The section heading is amended to ‘Seat of corporation or association for purposes of [certain provisions]’. Subsections (1)(a),(6) and (7) are omitted.

[43A Seat of companies or other legal persons, or of associations, for the purposes of Article 22(2) of the Lugano Convention

(1) The following provisions of this section determine where a company, or other legal person or an association of natural or legal persons, has its seat for the purposes of Article 22(2) of the Lugano Convention (which confers exclusive jurisdiction over proceedings relating to the validity of the constitution, the nullity or the dissolution of such bodies, or to the validity of the decisions of their organs).

(2) A company, legal person or association has its seat in the United Kingdom if and only if—

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

(3) Subject to subsection (4), a company, legal person or association has its seat in a State bound by the Lugano Convention other than the United Kingdom 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 State bound by the Lugano Convention other than the United Kingdom if—

- (a) it has its seat in the United Kingdom by virtue of subsection (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.]

Section 43A is omitted by SI 2019/479, reg 44.

44 Persons deemed to be domiciled in the United Kingdom for certain purposes

(1) This section applies to—

- (a) proceedings within Section 3 of Title II of the 1968 Convention [...] (insurance contracts), and
- (b) proceedings within Section 4 of [Title II of [the 1968 Convention]] (consumer contracts).

(2) A person who, for the purposes of proceedings to which this section applies arising out of the operations of a branch, agency or other establishment in the United Kingdom, is deemed for the purposes of the 1968 Convention [...] to be domiciled in the United Kingdom by virtue of—

- (a) Article 8, second paragraph (insurers); or
- (b) Article 13, second paragraph (suppliers of goods, services or credit to consumers),

shall, for the purposes of those proceedings, be treated for the purposes of this Act as so domiciled and as domiciled in the part of the United Kingdom in which the branch, agency or establishment in question is situated.

Section 44 is omitted by SI 2019/479, reg 45.

[44A Persons deemed to be domiciled in the United Kingdom for certain purposes of the Lugano Convention

(1) This section applies to—

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

(2) A person who, for the purposes of proceedings to which this section applies arising out of the operations of a branch, agency or other establishment in the United Kingdom, is deemed for the purposes of the Lugano Convention to be domiciled in the United Kingdom 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 and as domiciled in the part of the United Kingdom in which the branch, agency or establishment in question is situated.]

Section 44A is omitted by SI 2019/479, reg 46.

45 Domicile of trusts

(1) The following provisions of this section determine, for the purposes of the 1968 Convention [, the Lugano Convention] and this Act, where a trust is domiciled.

(2) A trust is domiciled in the United Kingdom if and only if it is by virtue of subsection (3) domiciled in a part of the United Kingdom.

(3) A trust is domiciled in a part of the United Kingdom if and only if the system of law of that part is the system of law with which the trust has its closest and most real connection.

Section 45(1) as amended by SI 2019/479, reg 45:

(1) The following provisions of this section determine, for the purposes of [...] this Act, where a trust is domiciled.

...

Other supplementary provisions

47 Modifications occasioned by decisions of European Court as to meaning or effect of Conventions

(1) Her Majesty may by Order in Council—

(a) make such provision as Her Majesty considers appropriate for the purpose of bringing the law of any part of the United Kingdom into accord with the [Brussels Conventions] as affected by any principle laid down by the European Court in connection with the [Brussels Conventions] or by any decision of that court as to the meaning or effect of any provision of the [Brussels Conventions]; or

(b) make such modifications of Schedule 4 or Schedule 8, or of any other statutory provision affected by any provision of either of those Schedules, as Her Majesty considers appropriate in view of any principle laid down by the European Court in connection with Title II of the 1968 Convention or of any decision of that court as to the meaning or effect of any provision of that Title.

(2) The provision which may be made by virtue of paragraph (a) of subsection (1) includes such modifications of this Act or any other statutory provision, whenever passed or made, as Her Majesty considers appropriate for the purpose mentioned in that paragraph.

(3) The modifications which may be made by virtue of paragraph (b) of subsection (1) include modifications designed to produce divergence between any provision of Schedule 4 or Schedule 8 and a corresponding provision of Title II of the 1968 Convention as affected by any such principle or decision as is mentioned in that paragraph.

(4) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

Section 47 is omitted by SI 2019/479, reg 49.

48 Matters for which rules of court may provide

[(1) Rules of court may make provision for regulating the procedure to be followed in any court in connection with any provision of this Act, the Lugano Convention, the Brussels Conventions, the Regulation, the Maintenance Regulation, the 2007 Hague Convention or the 2005 Hague Convention.]

(2) Rules of court may make provision as to the manner in which and the conditions subject to which a [certificate or judgment—

(a) which has been registered in any court under any provision of this Act [... or the 2007 Hague Convention,]

[(aa) which is enforceable in the United Kingdom under the Regulation,]

(b) which is enforceable in the United Kingdom by virtue of Section 1 of Chapter IV of the Maintenance Regulation, or

(c) which has been registered for the purposes of Section 2 of that Chapter, may be enforced,] including provision for enabling the court or, in Northern Ireland the Enforcement of Judgments Office, subject to any conditions specified in the rules, to give directions about such matters.

(3) Without prejudice to the generality of subsections (1) and (2), the power to make rules of court for [the family court, the power to make rules of court for magistrates' courts in Northern Ireland,] and in Northern Ireland the power to make Judgment Enforcement Rules, shall include power to make such provision as the rule-making authority considers necessary or expedient for the purposes of the provisions of [the Lugano Convention, the Brussels Conventions] [, the Regulation] [, the Maintenance Regulation] [, the 2007 Hague Convention] and this Act relating to maintenance proceedings and the recognition and enforcement of maintenance orders, and shall in particular include power to make provision as to any of the following matters—

(a) authorising the service in another Contracting State [, Regulation State [, Maintenance Regulation State or 2007 Hague Convention State]] of process issued by or for the purposes of [the family court or] a magistrates' court and the service and execution in England and Wales or Northern Ireland of process issued in another Contracting State [, Regulation State [, Maintenance Regulation State or 2007 Hague Convention State]];

(b) requesting courts in other parts of the United Kingdom or in other Contracting States [, Regulation States [, Maintenance Regulation States or 2007 Hague Convention States]] to take evidence there for the purposes of proceedings in England and Wales or Northern Ireland;

(c) the taking of evidence in England and Wales or Northern Ireland in response to similar requests received from such courts;

(d) the circumstances in which and the conditions subject to which any powers conferred under paragraphs (a) to (c) are to be exercised;

(e) the admission in evidence, subject to such conditions as may be prescribed in the rules, of statements contained in documents purporting to be made or

authenticated by a court in another part of the United Kingdom or in another Contracting State [, Regulation State [, Maintenance Regulation State or 2007 Hague Convention State]], or by a judge or official of such a court, which purport—

(i) to set out or summarise evidence given in proceedings in that court or to be documents received in evidence in such proceedings or copies of such documents; or

(ii) to set out or summarise evidence taken for the purposes of proceedings in England and Wales or Northern Ireland, whether or not in response to any such request as is mentioned in paragraph (b); or

(iii) to record information relating to the payments made under an order of that court;

(f) the circumstances and manner in which [the family court or] a magistrates' court may or must vary or revoke a maintenance order registered in that court, cancel the registration of, or refrain from enforcing, such an order or transmit such an order for enforcement in another part of the United Kingdom;

(g) the cases and manner in which courts in other parts of the United Kingdom or in other Contracting States [, Regulation States [, Maintenance Regulation States or 2007 Hague Convention States]] are to be informed of orders made, or other things done, by or for the purposes of [the family court or] a magistrates' court;

(h) the circumstances and manner in which [the family court or] a magistrates' court may communicate for other purposes with such courts;

(i) the giving of notice of such matters as may be prescribed in the rules to such persons as may be so prescribed and the manner in which such notice is to be given.

(4) Nothing in this section shall be taken as derogating from the generality of any power to make rules of court conferred by any other enactment.

Section 48 as amended by SI 2019/479, reg 50 and SI 2019/519, reg 12 and prospectively amended by the Private International Law (Implementation of Agreements) Bill 2020:

[(1) Rules of court may make provision for regulating the procedure to be followed in any court in connection with any provision of this Act, [...] *[the 1996 Hague Convention,]* the 2007 Hague Convention or the 2005 Hague Convention.]

(2) Rules of court may make provision as to the manner in which and the conditions subject to which a [certificate or judgment—

(a) which has been registered in any court under any provision of this Act [... or the 2007 Hague Convention,]

may be enforced,] including provision for enabling the court or, in Northern Ireland, the Enforcement of Judgments Office, subject to any conditions specified in the rules, to give directions about such matters.

(3) Without prejudice to the generality of subsections (1) and (2), the power to make rules of court for [the family court, the power to make rules of court for magistrates' courts in Northern Ireland,] and in Northern Ireland the power to make Judgment Enforcement Rules, shall include power to make such provision as the rule-making authority considers necessary or expedient for the purposes of the provisions of [...] *[the 2007 Hague Convention]* and this Act relating to maintenance proceedings and the recognition and enforcement of maintenance orders, and shall in particular include power to make provision as to any of the following matters—

(a) authorising the service in another [...] *[2007 Hague Convention State]* of process issued by or for the purposes of [the family court or] a magistrates' court and the service and execution in England and Wales or Northern Ireland of process issued in another [...] *[2007 Hague Convention State]*;

(b) requesting courts in other parts of the United Kingdom or in other [...]

[2007 Hague Convention States] to take evidence there for the purposes of proceedings in England and Wales or Northern Ireland;

(c) the taking of evidence in England and Wales or Northern Ireland in response to similar requests received from such courts;

(d) the circumstances in which and the conditions subject to which any powers conferred under paragraphs (a) to (c) are to be exercised;

(e) the admission in evidence, subject to such conditions as may be prescribed in the rules, of statements contained in documents purporting to be made or authenticated by a court in another part of the United Kingdom or in another [...] [2007 Hague Convention State], or by a judge or official of such a court, which purport—

(i) to set out or summarise evidence given in proceedings in that court or to be documents received in evidence in such proceedings or copies of such documents; or

(ii) to set out or summarise evidence taken for the purposes of proceedings in England and Wales or Northern Ireland, whether or not in response to any such request as is mentioned in paragraph (b); or

(iii) to record information relating to the payments made under an order of that court;

(f) the circumstances and manner in which [the family court or] a magistrates' court may or must vary or revoke a maintenance order registered in that court, cancel the registration of, or refrain from enforcing, such an order or transmit such an order for enforcement in another part of the United Kingdom;

(g) the cases and manner in which courts in other parts of the United Kingdom or in other [...] [2007 Hague Convention States] are to be informed of orders made, or other things done, by or for the purposes of [the family court or] a magistrates' court;

(h) the circumstances and manner in which [the family court or] a magistrates' court may communicate for other purposes with such courts;

(i) the giving of notice of such matters as may be prescribed in the rules to such persons as may be so prescribed and the manner in which such notice is to be given.

(4) Nothing in this section shall be taken as derogating from the generality of any power to make rules of court conferred by any other enactment.

49 Saving for powers to stay, sist, strike out or dismiss proceedings

Nothing in this Act shall prevent any court in the United Kingdom from staying, sisting, striking out or dismissing any proceedings before it, on the ground of forum non conveniens or otherwise, where to do so is not inconsistent with the 1968 Convention [or, as the case may be, the Lugano Convention [or the 2005 Hague Convention]].

Section 49 as amended by SI 2019/479, reg 51:

Nothing in this Act shall prevent any court in the United Kingdom from staying, sisting, striking out or dismissing any proceedings before it, on the ground of forum non conveniens or otherwise, where to do so is not inconsistent with [...] [the 2005 Hague Convention].

General

50 Interpretation: general

In this Act, unless the context otherwise requires—

['the Accession Convention', 'the 1982 Accession Convention', 'the 1989 Accession Convention' and 'the 1996 Accession' Convention have the meaning given by section 1(1);]

'Article' and references to sub-divisions of numbered Articles are to be construed in accordance with section 1(2)(b);

'association' means an unincorporated body of persons;

['Brussels Contracting State' has the meaning given by section 1(3);

'the Brussels Conventions' has the meaning given by section 1(1);]

'Contracting State' has the meaning given by section 1(3);

'the 1968 Convention' has the meaning given by section 1(1), and references to that Convention and to provisions of it are to be construed in accordance with section 1(2)(a);

'corporation' means a body corporate, and includes a partnership subsisting under the law of Scotland;

'court', without more, includes a tribunal;

'court of law', in relation to the United Kingdom, means any of the following courts, namely—

(a) the Supreme Court,]

(b) in England and Wales or Northern Ireland, the Court of Appeal, the High Court, the Crown Court, a county court and a magistrates' court,

(c) in Scotland, the Court of Session and a sheriff court;

'the Crown' is to be construed in accordance with section 51(2);

'enactment' includes an enactment comprised in Northern Ireland legislation;

['the 2005 Hague Convention' has the meaning given by section 1(1);

'2005 Hague Convention State' has the meaning given by section 1(3);]

['the 2007 Hague Convention' has the meaning given by section 1(1);

'2007 Hague Convention State' has the meaning given by section 1(3);]

'judgment', subject to sections 15(1) and 18(2) and to paragraph 1 of Schedules 6 and 7, means any judgment or order (by whatever name called) given or made by a court in any civil proceedings;

[...]

'the Lugano Convention' has the meaning given by section 1(i);]

'magistrates' court', in relation to Northern Ireland, means a court of summary jurisdiction;

'modifications' includes additions, omissions and alterations;

'overseas country' means any country or territory outside the United Kingdom;

'part of the United Kingdom' means England and Wales, Scotland or Northern Ireland;

'the 1971 Protocol' has the meaning given by section 1(1), and references to that Protocol and to provisions of it are to be construed in accordance with section 1(2)(a);

['the Regulation' has the meaning given by section 1(1);

'Regulation State' has the meaning given by section 1(3);]

'rules of court', in relation to any court, means rules, orders or regulations made by the authority having power to make rules, orders or regulations regulating the procedure of that court, and includes—

(a) in Scotland, Acts of Sederunt;

(b) in Northern Ireland, Judgment Enforcement Rules;

['State bound by the Lugano Convention' has the meaning given by section 1(3);]

'statutory provision' means any provisions contained in an Act, or in any Northern Ireland legislation, or in—

(a) subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978); or

(b) any instrument of a legislative character made under any Northern Ireland legislation;

'tribunal'—

(a) means a tribunal of any description other than a court of law;

(b) in relation to an overseas country, includes, as regards matters relating to maintenance within the meaning of the 1968 Convention, any authority having power to give, enforce, vary or revoke a maintenance order.

Section 50 as amended by SI 2019/479, reg 52 and SI 2019/519, reg 1:

In this Act, unless the context otherwise requires—

‘the Accession Convention’, ‘the 1982 Accession Convention’ [and ‘the 1989 Accession Convention’] have the meaning given by section 1(1);

[...]

‘association’ means an unincorporated body of persons;

[...]

‘Contracting State’ has the meaning given by section 1(3);

‘the 1968 Convention’ has the meaning given by section 1(1), and references to that Convention and to provisions of it are to be construed in accordance with section 1(2)(a);

‘corporation’ means a body corporate, and includes a partnership subsisting under the law of Scotland;

‘court’, without more, includes a tribunal;

‘court of law’, in relation to the United Kingdom, means any of the following courts, namely—

(a) the Supreme Court],

(b) in England and Wales or Northern Ireland, the Court of Appeal, the High Court, the Crown Court, a county court and a magistrates’ court,

(c) in Scotland, the Court of Session and a sheriff court;

‘the Crown’ is to be construed in accordance with section 51(2);

‘enactment’ includes an enactment comprised in Northern Ireland legislation;

[‘the expert reports relating to the 1968 Convention means—

(a) the reports by Mr P Jenard on the 1968 Convention and the 1971 Protocol;

(b) the report by Professor Peter Schlosser on the Accession Convention;

(c) the report by Professor Demetrios I Evrigenis and Professor K D Kera-meus on the 1982 Accession Convention; and

(d) the report by Mr Martinho de Almeida Cruz, Mr Manuel Desantes Real and Mr P Jenard on the 1989 Accession Convention;]

[‘the 2005 Hague Convention’ has the meaning given by section 1(1);]

[‘2005 Hague Convention State’ has the meaning given by section 1(3);]

[‘the 2007 Hague Convention’ has the meaning given by section 1(1);]

[2007 Hague Convention State’ has the meaning given by section 1(3);]

‘judgment’, subject to sections 15(1) and 18(2) and to paragraph 1 of Schedules 6 and 7, means any judgment or order (by whatever name called) given or made by a court in any civil proceedings;

[...]

‘magistrates’ court’, in relation to Northern Ireland, means a court of summary jurisdiction;

‘modifications’ includes additions, omissions and alterations;

‘overseas country’ means any country or territory outside the United Kingdom;

‘part of the United Kingdom’ means England and Wales, Scotland or Northern Ireland;

‘the 1971 Protocol’ has the meaning given by section 1(1), and references to that Protocol and to provisions of it are to be construed in accordance with section 1(2)(a);

[‘the Regulation’ has the meaning given by section 1(1);

[...]

‘rules of court’, in relation to any court, means rules, orders or regulations made by the authority having power to make rules, orders or regulations regulating the procedure of that court, and includes—

(a) in Scotland, Acts of Sederunt;

(b) in Northern Ireland, Judgment Enforcement Rules;

[...]

‘statutory provision’ means any provisions contained in an Act, or in any Northern Ireland legislation, or in—

(a) subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978); or

(b) any instrument of a legislative character made under any Northern Ireland legislation;
‘tribunal’—

(a) means a tribunal of any description other than a court of law;

[...]

within the meaning of the 1968 Convention, any authority having power to give, enforce, vary or revoke a maintenance order].

SCHEDULES

[SCHEDULE 1

TEXT OF 1968 CONVENTION, AS AMENDED

Schedule 1 is omitted by SI 2019/479, reg 53.

CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

Desiring to implement the provisions of Article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals;

Anxious to strengthen in the Community the legal protection of persons therein established;

Considering that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements;

Have decided to conclude this Convention and to this end have designated as their Plenipotentiaries;

(Designations of Plenipotentiaries of the original six Contracting States)

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form, HAVE AGREED AS FOLLOWS:

TITLE I – SCOPE

Article 1

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to—

1. The status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession.
2. Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings.
3. Social security.
4. Arbitration.

TITLE II – JURISDICTION

*Section 1 – General Provisions***Article 2**

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 3

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

In particular the following provisions shall not be applicable as against them—

- in Belgium: Article 15 of the civil code (Code civil—Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire—Gerechtelijk Wetboek),

- in Denmark: Article 246 (2) and (3) of the law on civil procedure (Lov om retsens pleje),

- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozessordnung)

- in Greece: Article 40 of the code of civil procedure (Κωδικός Πολιτικής ΔιΧοΧομίας),

- in France: Articles 14 and 15 of the civil code (Code civil),

- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,

- in Italy: Articles 2 and 4, nos 1 and 2 of the code of civil procedure (Codice di procedura civile),

- in Luxembourg: Articles 14 and 15 of the civil code (Code civil),

- in the Netherlands: Articles 126(3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),

- in Austria: Article 99 of the Law on Court Jurisdiction (Jurisdiktionsnorm),

- in Portugal: Article 65(1)(c), article 65(2) and article 65A(c) of the code of civil procedure (Código Processo Civil) and Article 11 of the code of labour procedure (Código de Processo de Trabalho),

- in Finland: the second, third and fourth sentences of the first paragraph of Section 1 of Chapter 10 of the Code of Judicial Procedure (oikeudenkäymiskaari/rättegångsbalken),

- in Sweden: the first sentence of the first paragraph of Section 3 of Chapter 10 of the Code of Judicial Procedure (rättegångsbalken),

- in the United Kingdom: the rules which enable jurisdiction to be founded on:

- the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or

- the presence within the United Kingdom of property belonging to the defendant; or

- the seizure by the plaintiff of property situated in the United Kingdom.

Article 4

If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

*Section 2 – Jurisdiction***Article 5**

A person domiciled in a Contracting State may, in another Contracting State, be sued—

1. In matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, the employer may also be sued in the courts for the place where the business which engaged the employee was or is now situated.

2. In matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.

3. In matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred.

4. As regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.

5. As regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated.

6. As settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled.

7. As regards a dispute concerning the payment of remuneration claimed in respect of the salvage of cargo or freight, in the court under the authority of which the cargo or freight in question—

(a) has been arrested to secure such payment, or

(b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a Contracting State may also be sued—

1. Where he is one of a number of defendants, in the courts for the place where any one of them is domiciled.

2. As a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case.

3. On a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.

4. In matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Contracting State in which the property is situated.

Article 6a

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

*Section 3 – Jurisdiction in Matters Relating to Insurance***Article 7**

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 point 5.

Article 8

An insurer domiciled in a Contracting State may be sued—

1. in the courts of the State where he is domiciled, or
2. in another Contracting State, in the courts for the place where the policy-holder is domiciled, or
3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer. An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 9

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 10

In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party had brought against the insured.

The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 11

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 12

The provisions of this Section may be departed from only by an agreement on jurisdiction—

1. which is entered into after the dispute has arisen, or
2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policy-holder and an insurer, both of whom are domiciled in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, providing that such an agreement is not contrary to the law of that State, or
4. which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12a.

Article 12a

The following are the risks referred to in point 5 of Article 12—

1. Any loss of or damage to—
 - (a) sea-going ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft.
2. Any liability, other than for bodily injury to passengers or loss of or damage to their baggage—
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in point 1(b) above.
3. Any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a) above, in particular loss of freight or charter-hire.
4. Any risk or interest connected with any of those referred to in points 1 to 3 above.

Section 4 – Jurisdiction over Consumer Contracts

Article 13

In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called 'the consumer', jurisdiction shall be determined by this section, without prejudice to the provisions of Article 4 and point 5 of Article 5, if it is—

1. a contract for the sale of goods on instalment credit terms, or
2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
3. any other contract for the supply of goods or a contract for the supply of services, and
 - (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising; and
 - (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State. This Section shall not apply to contracts of transport.

Article 14

A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled.

These provisions shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 15

The provisions of this Section may be departed from only by an agreement—

1. which is entered into after the dispute has arisen, or

2. which allows the consumer to bring proceedings in courts other than those indicated in this Section, or

3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

Section 5 – Exclusive Jurisdiction

Article 16

The following courts shall have exclusive jurisdiction, regardless of domicile:

1. (a) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated;

(b) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the landlord and the tenant are natural persons and are domiciled in the same Contracting State.

2. In proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat.

3. In proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept.

4. In proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place.

5. In proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced.

Section 6 – Prorogation of Jurisdiction

Article 17

If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either—

a. in writing or evidenced in writing, or

b. in a form which accords with practices which the parties have established between themselves, or

c. in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought

against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

Agreement or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention.

In matters relating to individual contracts of employment an agreement conferring jurisdiction shall have legal force only if it is entered into after the dispute has arisen or if the employee invokes it to seize courts other than those for the defendant's domicile or those specified in Article 5(1).

Article 18

Apart from jurisdiction derived from other provisions of this Convention a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16.

Section 7 – Examination as to Jurisdiction and Admissibility

Article 19

Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

Article 20

Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of the Convention.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15th November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the documents instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

Section 8 – Lis Pendens – Related Actions

Article 21

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 22

Where related actions are brought in the courts of different Contracting States, any

court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 23

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Section 9 – Provisional, including Protective, Measures

Article 24

Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

TITLE III – RECOGNITION AND ENFORCEMENT

Article 25

For the purpose of this Convention, ‘judgment’ means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Section 1 – Recognition

Article 26

A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Section 2 and 3 of this Title, apply for a decision that the judgment be recognised.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 27

A judgment shall not be recognized—

1. If such recognition is contrary to public policy in the State in which recognition is sought.
2. Where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence.
3. If the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought.
4. If the court of the State of origin, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the

State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State.

5. If the judgment is irreconcilable with an earlier judgment given in a non-contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the state addressed.

Article 28

Moreover, a judgment shall not be recognised if it conflicts with the provisions of Sections 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State of origin may not be reviewed; the test of public policy referred to in point 1 of Article 27 may not be applied to the rules relating to jurisdiction.

Article 29

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 30

A court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

Section 2 – Enforcement

Article 31

A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there.

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 32

1. The application shall be submitted—

- in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg,
- in Denmark, to the byret,
- in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
- in Greece, to the Μουομελες Πρωτοδικειο,
- in Spain, to the Juzgado de Primera Instancia,
- in France, to the presiding judge of the tribunal de grande instance,
- in Ireland, to the High Court,
- in Italy, to the corte d'appello,
- in Luxembourg, to the presiding judge of the tribunal d'arrondissement,
- in the Netherlands, to the presiding judge of the d'arrondissementrechtbank,
- in Austria, to the Bezirksgericht,
- in Portugal, to the Tribunal Judicial de Circulo,
- in Finland, to the Käräjaoikeus/tingsrätt,

- in Sweden, in the Svea hovrätt,
- in the United Kingdom—
 - (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;
 - (b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
 - (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State.

2. The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

Article 33

The procedure for making the application shall be governed by the law of the State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

The documents referred to in Articles 46 and 47 shall be attached to the application.

Article 34

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons specified in Articles 27 and 28.

Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 35

The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

Article 36

If enforcement is authorized, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorizing enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 37

1. An appeal against the decision authorizing enforcement shall be lodged in accordance with the rules governing procedure in contentious matters—

- in Belgium, with the tribunal de première instance or rechtbank van eerste aanleg,
- in Denmark, with the landsret,
- in the Federal Republic of Germany, with the Oberlandesgericht,
- in Greece, with the Εφετείο,
- in Spain, with the Audiencia Provincial,
- in France, with the cour d'appel,
- in Ireland, with the High Court,
- in Italy, with the corte d'appello,

- in Luxembourg, with the Court supérieure de justice sitting as a court of civil appeal,
 - in the Netherlands, with the arrondissementsrechtbank,
 - in Austria, with the Bezirksgericht,
 - in Portugal, with the Tribunal de Relação,
 - in Finland, with the hovioikeus/hovrätt,
 - in Sweden, with the Svea hovrätt,
 - in the United Kingdom—
 - (a) in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court;
 - (b) in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;
 - (c) in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.
2. The judgment given on the appeal may be contested only—
- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
 - in the Federal Republic of Germany, by a Rechtsbeschwerde,
 - in Ireland, by an appeal on a point of law to the Supreme Court,
 - in Austria, in the case of an appeal by a Revisionsrekurs and, in the case of opposition proceedings, by a Berufung with the possibility of a revision,
 - in Portugal, by an appeal on a point of law,
 - in Finland, by an appeal to korkein oikeus/högsta domstolen,
 - in Sweden, by an appeal to Högsta domstolen,
 - in the United Kingdom, by a single further appeal on a point of law.

Article 38

The court with which the appeal under Article 37(1) is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Where the judgement was given in Ireland or the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of the first paragraph.

The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 39

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorising enforcement shall carry with it the power to proceed to any such protective measures.

Article 40

1. If the application for enforcement is refused, the applicant may appeal—
 - in Belgium, to the cour d'appel or hof van beroep,
 - in Denmark, to the landsret,
 - in the Federal Republic of Germany, to the Oberlandesgericht,
 - in Greece, to the Εφετείο,
 - in Spain, to the Audiencia Provincial,
 - in France, to the cour d'appel,
 - in Ireland, to the High Court,

- in Italy, to the corte d'appello,
 - in Luxembourg, to the Cour supérieure de justice sitting as a court of civil appeal,
 - in the Netherlands, to the gerechtshof,
 - in Austria, to the Bezirksgericht,
 - in Portugal, to the Tribunal de Relação,
 - in Finland, to the hovioikeus/hovrätten,
 - in Sweden, to the Svea hovrätt,
 - in the United Kingdom—
 - (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;
 - (b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
 - (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.
2. The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

Article 41

A judgment given on appeal provided for in Article 40 may be contested only—

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in Austria, by a Revisionsrekurs,
- in Portugal, by an appeal on a point of law,
- in Finland, by an appeal to korkein oikeus/högsta domstolen,
- in Sweden, by an appeal to Högsta domstolen,
- in the United Kingdom, by a single further appeal on a point of law.

Article 42

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorized for all of them, the court shall authorize enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

Article 43

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.

Article 44

An applicant who, in the State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from the Danish Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Article 45

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

*Section 3 – Common Provisions***Article 46**

A party seeking recognition or applying for enforcement of a judgment shall produce—

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.

Article 47

A party applying for enforcement shall also produce—

1. documents which establish that, according to the law of the State of origin the judgment is enforceable and has been served;
2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State of origin.

Article 48

If the documents specified in point 2 of Articles 46 and 47 are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

Article 49

No legalization or other similar formality shall be required in respect of the documents referred to in Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative *ad litem*.

TITLE IV – AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS**Article 50**

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 *et seq.* The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.

Article 51

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments.

TITLE V – GENERAL PROVISIONS

Article 52

In order to determine whether a party is domiciled in the Contracting State whose courts are seised of a matter, the Court shall apply its internal law.

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

Article 53

For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

TITLE VI – TRANSITIONAL PROVISIONS

Article 54

The provisions of the Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgment or authentic instruments is sought, in the State addressed.

However, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

If the parties to a dispute concerning a contract had agreed in writing before 1st June 1988 for Ireland or before 1st January 1987 for the United Kingdom that the contract was to be governed by the law of Ireland or of a part of the United Kingdom, the courts of Ireland or of that part of the United Kingdom shall retain the right to exercise jurisdiction in the dispute.

Article 54a

For a period of three years from 1st November 1987 for Denmark and from 1st June 1988 for Ireland, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of Title II, but also in accordance with the provisions of paragraphs 1 to 6 following. However, upon the entry into force of the International Convention relating to the arrest of sea-going ships, signed at Brussels on 10th May 1952, for one of these States, these provisions shall cease to have effect for that State.

1. A person who is domiciled in a Contracting State may be sued in the Courts of one of the States mentioned above in respect of a maritime claim if the ship to which the claim relates or any other ship owned by him has been arrested by judicial process within the territory of the latter State to secure the claim, or could have been so arrested there but bail or other security has been given, and either—

- (a) the claimant is domiciled in the latter State, or
- (b) the claim arose in the latter State, or
- (c) the claim concerns the voyage during which the arrest was made or could have been made, or
- (d) the claim arises out of a collision or out of damage caused by a ship to

another ship or to goods or persons on board either ship, either by the execution or non-execution of a manoeuvre or by the non-observance of regulations, or

- (e) the claim is for salvage, or
- (f) the claim is in respect of a mortgage or hypothecation of the ship arrested.

2. A claimant may arrest either the particular ship to which the maritime claim relates, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. However, only the particular ship to which the maritime claim relates may be arrested in respect of the maritime claims set out in 5(o), (p) or (q) of this Article.

3. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

4. When in the case of a charter by demise of a ship the charterer alone is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship owned by the charterer, but no other ship owned by the owner may be arrested in respect of such claim. The same shall apply to any case in which a person other than the owner of a ship is liable in respect of a maritime claim relating to that ship.

5. The expression 'maritime claim' means a claim arising out of one or more of the following—

- (a) damage caused by any ship either in collision or otherwise;
- (b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- (c) salvage;
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- (f) loss of or damage to goods including baggage carried in any ship;
- (g) general average;
- (h) bottomry;
- (i) towage;
- (j) pilotage;
- (k) goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) construction, repair or equipment of any ship or dock charges and dues;
- (m) wages of master, officers or crew;
- (n) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- (o) dispute as to the title to or ownership of any ship;
- (p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
- (q) the mortgage or hypothecation of any ship.

6. In Denmark, the expression 'arrest' shall be deemed as regards the maritime claims referred to in 5(o) and (p) of this Article, to include a 'forbud', where that is the only procedure allowed in respect of such a claim under Articles 646 to 653 of the law on civil procedure (lov om rettens pleje).

TITLE VII – RELATIONSHIP TO OTHER CONVENTIONS

Article 55

Subject to the provisions of the second subparagraph of Article 54, and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them—

- the Convention between Belgium and France on jurisdiction and the

validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8th July 1899,

- the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28th March 1925,

- the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3rd June 1930,

- the Convention between the United Kingdom and the French Republic providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Paris on 18th January 1934,

- the Convention between the United Kingdom and the Kingdom of Belgium providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on 2nd May 1934,

- the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9th March 1936,

- the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments relating to maintenance obligations, signed at Vienna on 25th October 1957,

- the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30th June 1958,

- the Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17th April 1959,

- the Convention between the Federal Republic of Germany and Austria on the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6th June 1959,

- the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Vienna on 16th June 1959,

- the Convention between the United Kingdom and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Bonn on 14th July 1960,

- the Convention between the Kingdom of Greece and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed in Athens on 4th November 1961,

- the Convention between the Kingdom of Belgium and the Italian Republic on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6th April 1962,

- the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30th August 1962,

- the Convention between the Kingdom of the Netherlands and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at The Hague on 6th February 1963,

- the Convention between France and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Vienna on 15th July 1966,

- the Convention between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial

matters, signed at Rome on 7th February 1964, with amending Protocol signed at Rome on 14th July 1970,

- the Convention between the United Kingdom and the Kingdom of the Netherlands providing for the reciprocal recognition and enforcement of judgments in civil matters, signed at The Hague on 17th November 1967,
- the Convention between Spain and France on the recognition and enforcement of judgment arbitration awards in civil and commercial matters, signed at Paris on 28th May 1969,
- the Convention between the United Kingdom and Austria providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Vienna on 14th July 1961, with amending Protocol signed at London on 6th March 1970,
- the Convention between Luxembourg and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Luxembourg on 29th July 1971,
- the Convention between Italy and Austria on the recognition and enforcement of judgments in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16th November 1971,
- the Convention between Spain and Italy regarding legal aid and the recognition and enforcement of judgments in civil and commercial matters, signed at Madrid on 22nd May 1973,
- the Convention between Finland, Iceland, Norway, Sweden and Denmark on the recognition and enforcement of judgments in civil matters, signed at Copenhagen on 11th October 1977,
- the Convention between Austria and Sweden on the recognition and enforcement of judgments in civil matters, signed at Stockholm on 16th September 1982,
- the Convention between Spain and the Federal Republic of Germany on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Bonn on 14th November 1983,
- the Convention between Austria and Spain on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17th February 1984, and
- the Convention between Finland and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 17th November 1986, and, in so far as it is in force—
- the Treaty between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24th November 1961.

Article 56

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into the force of this Convention.

Article 57

1. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner—

- (a) this Convention shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that Convention, even where the defendant is domiciled in

another Contracting State which is not a party to that Convention. The court hearing the action shall, in any event, apply Article 20 of this Convention.

(b) judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognized and enforced in the other Contracting State in accordance with this Convention.

Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedure for recognition and enforcement of judgments may be applied.

3. This Convention shall not affect the application of provisions which, in relation to particular matters govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

Article 58

Until such time as the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Lugano on 16th September 1988 takes effect with regard to France and the Swiss Confederation, this Convention shall not affect the rights granted to Swiss nationals by the Convention between France and the Swiss Confederation on jurisdiction and enforcement of judgments in civil matters, signed at Paris on 15th June 1869.

Article 59

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognize a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property, belonging to the defendant, or the seizure by the plaintiff of property situated there—

1 if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or

2 if the property constitutes the security for a debt which is the subject-matter of the action.

TITLE VIII – FINAL PROVISIONS

[...]

Article 61

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 62

This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step.

Article 63

The Contracting States recognize that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a

basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member States of the other part.

Article 64

The Secretary-General of the Council of the European Communities shall notify the signatory States of—

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Convention;
- (c) [Deleted]
- (d) any declaration received pursuant to Article IV of the Protocol;
- (e) any communication made pursuant to Article VI of the Protocol;

Article 65

The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

Article 66

This Convention is concluded for an unlimited period.

Article 67

Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 68

This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

(Signatures of Plenipotentiaries of the original six Contracting States).

ANNEXED PROTOCOL

The High Contracting Parties have agreed upon the following provisions, which shall be annexed to the Convention.

Article I

Any person domiciled in Luxembourg who is sued in a court of another Contracting State pursuant to Article 5(1) may refuse to submit to the jurisdiction of that court. If the defendant does not enter an appearance the court shall declare of its own motion that it has no jurisdiction.

An agreement conferring jurisdiction, within the meaning of Article 17, shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed.

Article II

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

However, the court seized of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person

concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Contracting States.

Article III

In proceedings for the issue of an order for enforcement, no charge, duty or fee calculated by reference to the value of the matter in issue may be levied in the State in which enforcement is sought.

Article IV

Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State applied to who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State applied to. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

Article V

The jurisdiction specified in Articles 6(2) and 10 in actions on a warranty or guarantee or in any other third party proceedings may not be resorted to in the Federal Republic of Germany or in Austria. Any person domiciled in another Contracting State may be sued in the courts:

- of the Federal Republic of Germany, pursuant to Articles 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices;
- of Austria, pursuant to Article 21 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices.

Judgments given in the other Contracting States by virtue of Articles 6(2) or 10 shall be recognised and enforced in the Federal Republic of Germany and in Austria in accordance with Title III. Any effects which judgments given in those States may have on third parties by application of the provisions in the preceding paragraph shall also be recognised in the other Contracting States.

Article Va

In matters relating to maintenance, the expression 'court' includes the Danish administrative authorities.

In Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande) and assistance (bandräkning), the expression 'court' includes the 'Swedish enforcement service' (kronofogdemyndighet).

Article Vb

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark, in Greece, in Ireland or in Portugal, concerning remuneration or other conditions of service, a court in a Contracting State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It shall stay the proceedings so long as he has not been notified. It shall of its own motion decline jurisdiction if the officer, having been duly notified, has exercised the powers accorded to him in the matter

by a consular convention, or in the absence of such a convention has, within the time allowed, raised any objection to the exercise of such jurisdiction.

Article Vc

Articles 52 and 53 of this Convention shall, when applied by Article 69(5) of the Convention for the European patent for the common market, signed at Luxembourg on 15 December 1975, to the provisions relating to 'residence' in the English text of that Convention, operate as if 'residence' in that text were the same as 'domicile' in Articles 52 and 53.

Article Vd

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the grant of European patents, signed at Munich on 5 October 1973, the courts of each Contracting State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State which is not a Community patent by virtue of the provisions of Article 86 of the Convention for the European patent for the common market, signed at Luxembourg on 15 December 1975.

Article Ve

Arrangements relating to maintenance obligations concluded with administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of the first paragraph of Article 50 of the Convention.

Article VI

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the text of any provisions of their laws which amend either those articles of their laws mentioned in the Convention or the lists of courts specified in Section 2 of Title III of the Convention.

(Signatures of Plenipotentiaries of the original six Contracting States).]

SCHEDULE 2 TEXT OF 1971 PROTOCOL, AS AMENDED

Schedule 2 is omitted by SI 2019/479, reg 54.

Article 1

The Court of Justice of the [European Union] shall have jurisdiction to give rulings on the interpretation of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and of the Protocol annexed to that Convention, signed at Brussels on 27th September 1968, and also on the interpretation of the present Protocol.

The Court of Justice of the [European Union] shall also have jurisdiction to give rulings on the interpretation of the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention of 27 September 1968 and to this Protocol.

The Court of Justice of the [European Union] shall also have jurisdiction to give rulings on the interpretation of the Convention on the accession of the Hellenic Republic to the Convention of 27 September 1968 and to this Protocol, as adjusted by the 1978 Convention.

The Court of Justice of the [European Union] shall also have jurisdiction to give rulings on the interpretation of the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the Convention of 27 September 1968 and to this Protocol, as adjusted by the 1978 Convention and the 1982 Convention.

The Court of Justice of the [European Union] shall also have jurisdiction to give rulings on the interpretation of the Convention on the accession of the Republic of

Austria, the Republic of Finland and the Kingdom of Sweden to the Convention of 27 September 1968 and to this Protocol, as adjusted by the 1978 Convention, the 1982 Convention and the 1989 Convention.

Article 2

The following courts may request the Court of Justice to give preliminary rulings on questions of interpretation—

1. ...
 - in the United Kingdom: the House of Lords and courts to which application has been made under the second paragraph of Article 37 or under Article 41 of the Convention.
2. The courts of the Contracting States when they are sitting in an appellate capacity.
3. In the cases provided for in Article 37 of the Convention, the courts referred to in that Article.

Article 3

1. Where a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 is raised in a case pending before one of the courts listed in point 1 of Article 2, that court shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.
2. Where such a question is raised before any court referred to in point 2 or 3 of Article 2, that court may, under the conditions laid down in paragraph 1, request the Court of Justice to give a ruling thereon.

Article 4

1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 if judgments given by courts of that State conflict with the with the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Contracting State referred to in point 1 or 2 of Article 2. The provisions of this paragraph shall apply only to judgments which have become *res judicata*.
2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.
3. The Procurators-General of the Courts of Cassation of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph 1.
4. The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the [European Union]; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.
5. No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

Article 5

1. Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community and those of the Protocol on the Statute of the Court of Justice annexed thereto, which are applicable when the Court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of the Convention and the other instruments referred to in Article 1.
2. The Rules of Procedure of the Court of Justice shall, if necessary, be adjusted and supplemented in accordance with Article 188 of the Treaty establishing the European Economic Community.

...

SCHEDULE 3C
TEXT OF THE LUGANO CONVENTION

For the full text of the Lugano Convention, see p 456 below.

Schedules 3D–3G are prospectively inserted by the Private International Law (Implementation of Agreements) Bill 2020.

SCHEDULE 3D
CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION,
ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL
RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

For the full text of the Convention, see p 415 below.

SCHEDULE 3E
DECLARATIONS MADE BY THE UNITED KINGDOM IN RELATION TO THE
1996 HAGUE CONVENTION

PART 1
DECLARATION CONCERNING APPLICABLE TERRITORIAL UNITS

In accordance with Article 29, paragraph 2, of the Convention, the Government of the United Kingdom declares that it will interpret this paragraph as referring only to cases where the requesting Central Authority does not know to which applicable territorial unit their application should be addressed. In such cases the United Kingdom designates the Central Authority for England to transmit to the relevant Central Authority.

PART 2
DECLARATION CONCERNING COMMUNICATION OF REQUESTS UNDER
PARAGRAPH 1 OF ARTICLE 34

In accordance with Article 34, paragraph 2, of the Convention, the Government of the United Kingdom declares that requests made under paragraph 1 of Article 34 shall be communicated to its authorities only through the relevant Central Authority.

PART 3
DECLARATION CONCERNING THE USE OF FRENCH

In accordance with Article 54, paragraph 2, of the Convention, the Government of the United Kingdom of Great Britain and Northern Ireland declares that it objects to the use of French.

SCHEDULE 3F
TEXT OF THE 2005 HAGUE CONVENTION –
CONVENTION ON CHOICE OF COURT AGREEMENTS

For the full text of the 2005 Hague Convention, see p 427 below.

SCHEDULE 3G
TEXT OF THE 2007 HAGUE CONVENTION –
CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT
AND OTHER FORMS OF FAMILY MAINTENANCE

For the full text of the 2007 Hague Convention, see p 436 below.

[SCHEDULE 4
CHAPTER II OF THE REGULATION AS MODIFIED: RULES FOR
ALLOCATION OF JURISDICTION WITHIN UK

General

1. Subject to the rules of this Schedule, persons domiciled in a part of the United Kingdom shall be sued in the courts of that part.
2. Persons domiciled in a part of the United Kingdom may be sued in the courts of another part of the United Kingdom only by virtue of rules 3 to 13 of this Schedule.

Special jurisdiction

3. A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, be sued—
 - (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
[...]
 - (c) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
 - (d) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
 - (e) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
 - (f) as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the part of the United Kingdom in which the trust is domiciled;
 - (g) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question—
 - (i) has been arrested to secure such payment; or
 - (ii) could have been so arrested, but bail or other security has been given;provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage;
 - (h) in proceedings—
 - (i) concerning a debt secured on immovable property; or
 - (ii) which are brought to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property;in the courts of the part of the United Kingdom in which the property is situated.
4. Proceedings which have as their object a decision of an organ of a company or other legal person or of an association of natural or legal persons may, without prejudice to the other provisions of this Schedule, be brought in the courts of the part of the United Kingdom in which that company, legal person or association has its seat.
5. A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, also be sued—
 - (a) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(b) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

(c) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

(d) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the part of the United Kingdom in which the property is situated.

6. Where by virtue of this Schedule a court of a part of the United Kingdom has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that part, shall also have jurisdiction over claims for limitation of such liability.

Jurisdiction over consumer contracts

7.—(1) In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this rule and rules 8 and 9, without prejudice to rule 3(e) and (h)(ii), if—

(a) it is a contract for the sale of goods on instalment credit terms; or

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the part of the United Kingdom in which the consumer is domiciled or, by any means, directs such activities to that part or to other parts of the United Kingdom including that part, and the contract falls within the scope of such activities.

(2) This rule shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation, or to a contract of insurance.

8.—(1) A consumer may bring proceedings against the other party to a contract either in the courts of the part of the United Kingdom in which that party is domiciled or in the courts of the part of the United Kingdom in which the consumer is domiciled.

(2) Proceedings may be brought against a consumer by the other party to the contract only in the courts of the part of the United Kingdom in which the consumer is domiciled.

(3) The provisions of this rule shall not affect the right to bring a counter-claim in the court in which, in accordance with this rule and rules 7 and 9, the original claim is pending.

9. The provisions of rules 7 and 8 may be departed from only by an agreement—

(a) which is entered into after the dispute has arisen; or

(b) which allows the consumer to bring proceedings in courts other than those indicated in those rules; or

(c) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same part of the United Kingdom, and which confers jurisdiction on the courts of that part, provided that such an agreement is not contrary to the law of that part.

Rules 7–9 are omitted by SI 2019/479, reg 59.

Jurisdiction over individual contracts of employment

10.—(1) In matters relating to individual contracts of employment, jurisdiction shall be determined by this rule, without prejudice to rule 3(e).

(2) An employer may be sued—

(a) in the courts of the part of the United Kingdom in which he is domiciled; or

(b) in the courts of the part of the United Kingdom where the employee habitually carries out his work or in the courts of that part where he last did so; or

(c) if the employee does not or did not habitually carry out his work in any one place, in the courts of the part of the United Kingdom where the business which engaged the employee is or was situated.

(3) An employer may bring proceedings only in the courts of the part of the United Kingdom in which the employee is domiciled.

(4) The provisions of this rule shall not affect the right to bring a counter-claim in the court in which, in accordance with this rule, the original claim is pending.

(5) The provisions of this rule may be departed from only by an agreement on jurisdiction—

(a) which is entered into after the dispute has arisen; or

(b) which allows the employee to bring proceedings in courts other than those indicated in this rule.

Rule 10 is omitted by SI 2019/479, reg 59.

Exclusive jurisdiction

11. The following courts shall have exclusive jurisdiction, regardless of domicile:—

(a)—(i) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the part of the United Kingdom in which the property is situated;

(ii) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the part of the United Kingdom in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same part of the United Kingdom;

(b) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, the courts of the part of the United Kingdom in which the company, legal person or association has its seat;

(c) in proceedings which have as their object the validity of entries in public registers, the courts of the part of the United Kingdom in which the register is kept;

(d) in proceedings concerned with the enforcement of judgments, the courts of the part of the United Kingdom in which the judgment has been or is to be enforced.

Prorogation of jurisdiction

12.—(1) If the parties have agreed that a court or the courts of a part of the United Kingdom are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, and, apart from this Schedule, the agreement would be effective to confer jurisdiction under the law of that part, that court or those courts shall have jurisdiction.

(2) The court or courts of a part of the United Kingdom on which a trust instrument has conferred jurisdiction shall have jurisdiction in any proceedings

brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

(3) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of rule 9, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of rule 11.

Rule 12(3) as amended by SI 2019/479, reg 59:

(3) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force [...] if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of rule 11.

13.—(1) Apart from jurisdiction derived from other provisions of this Schedule, a court of a part of the United Kingdom before which a defendant enters an appearance shall have jurisdiction.

(2) This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of rule 11.

Examination as to jurisdiction and admissibility

14. Where a court of a part of the United Kingdom is seised of a claim which is principally concerned with a matter over which the courts of another part of the United Kingdom have exclusive jurisdiction by virtue of rule 11, it shall declare of its own motion that it has no jurisdiction.

15.—(1) Where a defendant domiciled in one part of the United Kingdom is sued in a court of another part of the United Kingdom and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Schedule.

(2) The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

Provisional, including protective, measures

16. Application may be made to the courts of a part of the United Kingdom for such provisional, including protective, measures as may be available under the law of that part, even if, under this Schedule, the courts of another part of the United Kingdom have jurisdiction as to the substance of the matter.]

[SCHEDULE 5
PROCEEDINGS EXCLUDED FROM SECTION 4

Proceedings under the Companies Acts

1. Proceedings for the winding up of a company under the [Insolvency Act 1986] or the [Insolvency (Northern Ireland) Order 1989], or proceedings relating to a company as respects which jurisdiction is conferred on the court having winding up jurisdiction under either of those Acts.

Patents, trade marks, designs and similar rights

2. Proceedings concerned with the registration or validity of patents, trade marks, designs or other similar rights required to be deposited or registered.

Protection of Trading Interests Act 1980

3. Proceedings under section 6 of the Protection of Trading Interests Act 1980 (recovery of sums paid or obtained pursuant to a judgment for multiple damages).

Appeals etc from tribunals

4. Proceedings on appeal from, or for review of, decisions of tribunals.
[...]

Proceedings under certain conventions, etc

6. Proceedings brought in any court in pursuance of—
(a) any statutory provision which, in the case of any convention to which Article 57 [or Article 71 of the Regulation,] applies (conventions relating to specific matters which override the general rules [...]), implements the convention or makes provision with respect to jurisdiction in any field to which the convention relates; and
(b) any rule of law so far as it has the effect of implementing any such convention.

Paragraph 6(a) as amended by SI 2019/479:

(a) any statutory provision which, in the case of any convention to which [the United Kingdom is or may become a party and which governs jurisdiction or recognition and enforcement of judgments in relation to a particular matter], implements the convention or makes provision with respect to jurisdiction in any field to which the convention relates; and

Certain Admiralty proceedings in Scotland

7. Proceedings in Scotland in an [admiralty action] where the jurisdiction of the Court of Session or, as the case may be, of the sheriff is based on arrestment in rem or ad fundandam jurisdictionem of a ship, cargo or freight.

Register of aircraft mortgages

8. Proceedings for the rectification of the register of aircraft mortgages kept by the Civil Aviation Authority.

Continental Shelf Act 1964

9. Proceedings brought in any court in pursuance of an order under [section 11 of the Petroleum Act 1998].

[Financial Services Act 1986

10. Proceedings such as are mentioned in [section 415 of the Financial Services and Markets Act 2000].]

[Proceedings by third parties against insurers

11. Proceedings under the Third Parties (Rights against Insurers) Act 2010.]]

SCHEDULE 6
ENFORCEMENT OF UK JUDGMENTS (MONEY PROVISIONS)

Preliminary

1. In this Schedule—

‘judgment’ means any judgment to which section 18 applies and references to the giving of a judgment shall be construed accordingly;

‘money provision’ means a provision for the payment of one or more sums of money;

‘prescribed’ means prescribed by rules of court.

Certificates in respect of judgments

2.—(1) Any interested party who wishes to secure the enforcement in another part of the United Kingdom of any money provisions contained in a judgment may apply for a certificate under this Schedule.

(2) The application shall be made in the prescribed manner to the proper officer of the original court, that is to say—

(a) in relation to a judgment within paragraph (a) of the definition of ‘judgment’ in section 18(2), the court by which the judgment or order was given or made;

(b) in relation to a judgment within paragraph (b) of that definition, the court in which the judgment or order is entered;

(c) in relation to a judgment within paragraph (c) of that definition, the court in whose books the document is registered;

(d) in relation to a judgment within paragraph (d) of the definition, the tribunal by which the award or order was made;

(e) in relation to a judgment within paragraph (e) of that definition, the court which gave the judgment or made the order by virtue of which the award has become enforceable as mentioned in that paragraph.

3. A certificate shall not be issued under this Schedule in respect of a judgment unless under the law of the part of the United Kingdom in which the judgement was given—

(a) either—

(i) the time for bringing an appeal against the judgment has expired, no such appeal having been brought within that time; or

(ii) such an appeal having been brought within that time, that appeal has been finally disposed of; and

(b) enforcement of the judgment is not for the time being stayed or suspended, and the time available for its enforcement has not expired.

4.—(1) Subject to paragraph 3, on an application under paragraph 2 the proper officer shall issue to the applicant a certificate in the prescribed form—

(a) stating the sum or aggregate of the sums (including any costs or expenses) payable under the money provisions contained in the judgment, the rate of interest, if any, payable thereon and the date or time from which any such interest began to accrue;

(b) stating that the conditions specified in paragraph 3(a) and (b) are satisfied in relation to the judgment; and

(c) containing such other particulars as may be prescribed.

(2) More than one certificate may be issued under this Schedule (simultaneously or at different times) in respect of the same judgment.

Registration of certificates

5.—(1) Where a certificate has been issued under this Schedule in any part of the

United Kingdom, any interested party may, within six months from the date of its issue, apply in the prescribed manner to the proper officer of the superior court in any other part of the United Kingdom for the certificate to be registered in that court.

(2) In this paragraph 'superior court' means, in relation to England and Wales or Northern Ireland, the High Court and, in relation to Scotland, the Court of Session.

(3) Where an application is duly made under this paragraph to the proper officer of a superior court, he shall register the certificate in that court in the prescribed manner.

General effect of registration

6.—(1) A certificate registered under this Schedule 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 certificate had been a judgment originally given in the registering court and had (where relevant) been entered.

(2) Sub-paragraph (1) is subject to the following provisions of this Schedule and to any provision made by rules of court as to the manner in which and the conditions subject to which a certificate registered under this Schedule may be enforced.

Costs or expenses

7. Where a certificate is registered under this Schedule, the reasonable costs or expenses of and incidental to the obtaining of the certificate and its registration shall be recoverable as if they were costs or expenses stated in the certificate to be payable under a money provision contained in the original judgment.

Interest

8.—(1) Subject to any provision made under sub-paragraph (2), the debt resulting, apart from paragraph 7, from the registration of the certificate shall carry interest at the rate, if any, stated in the certificate from the date or time so stated.

(2) Provision may be made by rules of court as to the manner in which and the periods by reference to which any interest payable by virtue of sub-paragraph (1) is to be calculated and paid, including provision for such interest to cease to accrue as from a prescribed date.

(3) All such sums as are recoverable by virtue of paragraph 7 carry interest as if they were the subject of an order for costs or expenses made by the registering court on the date of registration of the certificate.

(4) Except as provided by this paragraph sums payable by virtue of the registration of a certificate under this Schedule shall not carry interest.

Stay or sisting of enforcement in certain cases

9. Where a certificate in respect of a judgment has been registered under this Schedule, the registering court may, if it is satisfied that any person against whom it is sought to enforce the certificate is entitled and intends to apply under the law of the part of the United Kingdom in which the judgment was given for any remedy which would result in the setting aside or quashing of the judgment, stay (or, in Scotland, sist) proceedings for the enforcement of the certificate, on such terms as it thinks fit, for such period as appears to the court to be reasonably sufficient to enable the application to be disposed of.

Cases in which registration of a certificate must or may be set aside

10. Where a certificate has been registered under this Schedule, the registering court—

(a) shall set aside the registration if, on an application made by any interested party, it is satisfied that the registration was contrary to the provisions of this Schedule;

(b) may set aside the registration if, on an application so made, it is satisfied that the matter in dispute in the proceedings in which the judgment in question was given had previously been the subject of a judgment by another court or tribunal having jurisdiction in the matter.

SCHEDULE 7
ENFORCEMENT OF UK JUDGMENTS (NON-MONEY PROVISIONS)

Preliminary

1. In this Schedule—

‘judgment’ means any judgment to which section 18 applies and references to the giving of a judgment shall be construed accordingly;

‘non-money provision’ means a provision for any relief or remedy not requiring payment of a sum of money;

‘prescribed’ means prescribed by rules of court.

Certified copy of judgments

2.—(1) Any interested party who wishes to secure the enforcement in another part of the United Kingdom of any non-money provisions contained in a judgment may apply for a certified copy of the judgment.

(2) The application shall be made in the prescribed manner to the proper officer of the original court, that is to say—

(a) in relation to a judgment within paragraph (a) of the definition of ‘judgment’ in section 18(2), the court by which the judgment or order was given or made;

(b) in relation to a judgment within paragraph (b) of that definition, the court in which the judgment or order is entered;

(c) in relation to a judgment within paragraph (c) of that definition, the court in whose books the document is registered;

(d) in relation to a judgment within paragraph (d) of that definition, the tribunal by which the award for order was made;

(e) in relation to a judgment within paragraph (e) of that definition, the court which gave the judgment or made the order by virtue of which the award has become enforceable as mentioned in that paragraph.

3. A certified copy of a judgment shall not be issued under this Schedule unless under the law of the part of the United Kingdom in which the judgment was given—

(a) either—

(i) the time for bringing an appeal against the judgment has expired, no such appeal having been brought within that time; or

(ii) such an appeal having been brought within that time, that appeal has been finally disposed of; and

(b) enforcement of the judgment is not for the time being stayed or suspended, and the time available for its enforcement has not expired.

4.—(1) Subject to paragraph 3, on an application under paragraph 2 the proper officer shall issue to the applicant—

(a) a certified copy of the judgment (including any money provisions or excepted provisions which it may contain); and

(b) a certificate stating that the conditions specified in paragraph 3(a) and (b) are satisfied in relation to the judgment.

(2) In sub-paragraph (1)(a) 'excepted provision' means any provision of a judgment which is excepted from the application of section 18 by subsection (5) of that section.

(3) There may be issued under this Schedule (simultaneously or at different times)—

(a) more than one certified copy of the same judgment; and

(b) more than one certificate in respect of the same judgment.

Registration of judgments

5.—(1) Where a certified copy of a judgment has been issued under this Schedule in any part of the United Kingdom, any interested party may apply in the prescribed manner to the superior court in any other part of the United Kingdom for the judgment to be registered in that court.

(2) In this paragraph 'superior court' means, in relation to England and Wales or Northern Ireland, the High Court and, in relation to Scotland, the Court of Session.

(3) An application under this paragraph for the registration of a judgment must be accompanied by—

(a) a certified copy of the judgment issued under this Schedule; and

(b) a certificate issued under paragraph 4(1)(b) in respect of the judgment not more than six months before the date of the application.

(4) Subject to sub-paragraph (5), where an application under this paragraph is duly made to a superior court, the court shall order the whole of the judgment as set out in the certified copy to be registered in that court in the prescribed manner.

(5) A judgment shall not be registered under this Schedule by the superior court in any part of the United Kingdom if compliance with the non-money provisions contained in the judgment would involve a breach of the law of that part of the United Kingdom.

General effect of registration

6.—(1) The non-money provisions contained in a judgment registered under this Schedule shall, for the purposes of their enforcement, be of the same force and effect, the registering court shall have in relation to their enforcement the same powers, and proceedings for or with respect to their enforcement may be taken, as if the judgment containing them had been originally given in the registering court and had (where relevant) been entered.

(2) Sub-paragraph (1) is subject to the following provisions of this Schedule and to any provision made by rules of court as to the manner in which and conditions subject to which the non-money provisions contained in a judgment registered under this Schedule may be enforced.

Costs of expenses

7.—(1) Where a judgment is registered under this Schedule, the reasonable costs or expenses of and incidental to—

(a) the obtaining of the certified copy of the judgment and of the necessary certificate under paragraph 4(1)(b) in respect of it; and

(b) the registration of the judgment,

shall be recoverable as if on the date of registration there had also been registered in the registering court a certificate under Schedule 6 in respect of the judgment

and as if those costs or expenses were costs or expenses stated in that certificate to be payable under a money provision contained in the judgment.

(2) All such sums as are recoverable by virtue of sub-paragraph (1) shall carry interest as if they were the subject of an order for costs or expenses made by the registering court on the date of registration of the judgment.

Stay or sisting of enforcement in certain cases

8. Where a judgment has been registered under this Schedule, the registering court may, if it is satisfied that any person against whom it is sought to enforce the judgment is entitled and intends to apply under the law of the part of the United Kingdom in which the judgment was given for any remedy which would result in the setting aside or quashing of the judgment, stay (or, in Scotland, sist) proceedings for the enforcement of the judgment, on such terms as it thinks fit, for such period as appears to the court to be reasonably sufficient to enable the application to be disposed of.

Cases in which registered judgment may be set aside

9. Where a judgment has been registered under this Schedule, the registering court—

(a) shall set aside the registration if, on an application made by any interested party, it is satisfied that the registration was contrary to the provisions of this Schedule;

(b) may set aside the registration if, on an application so made, it is satisfied that the matter in dispute in the proceedings in which the judgment was given had previously been the subject of a judgment by another court or tribunal having jurisdiction in the matter.

[SCHEDULE 8
RULES AS TO JURISDICTION IN SCOTLAND

General

1. Subject to the following rules, persons shall be sued in the courts for the place where they are domiciled.

Special jurisdiction

2. Subject to rules 3 (jurisdiction over consumer contracts), 4 (jurisdiction over individual contracts of employment), 5 (exclusive jurisdiction) and 6 (prorogation), a person may also be sued—

(a) where he has no fixed residence, in a court within whose jurisdiction he is personally cited;

(b) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(c) in matters relating to delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

(d) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings to the extent that the court has jurisdiction to entertain civil proceedings;

[...]

(f) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

(g) in his capacity as settlor, trustee or beneficiary of a trust domiciled in

Scotland created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the Court of Session, or the appropriate sheriff court within the meaning of section 24A of the Trusts (Scotland) Act 1921;

[(ga) in the person's capacity as an executor (where confirmation has been obtained in Scotland)—

(i) in the Court of Session, or

(ii) before a sheriff of the sheriffdom in which confirmation was obtained.]

(h) where he is not domiciled in the United Kingdom, in the courts for any place where—

(i) any movable property belonging to him has been arrested; or

(ii) any immovable property in which he has any beneficial interest is situated;

(i) in proceedings which are brought to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, in the courts for the place where the property is situated;

(j) in proceedings for interdict, in the courts for the place where it is alleged that the wrong is likely to be committed;

(k) in proceedings concerning a debt secured over immovable property, in the courts for the place where the property is situated;

(l) in proceedings which have as their object a decision of an organ of a company or other legal person or of an association of natural or legal persons, in the courts for the place where that company, legal person or association has its seat;

(m) in proceedings concerning an arbitration which is conducted in Scotland or in which the procedure is governed by Scots law, in the Court of Session;

(n) in proceedings principally concerned with the registration in the United Kingdom or the validity in the United Kingdom of patents, trade marks, designs or other similar rights required to be deposited or registered, in the Court of Session;

(o) (i) where he is one of a number of defenders, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(ii) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

(iii) on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

(p) in matters relating to a contract, if the action may be combined with an action against the same defender in matters relating to rights in rem in immovable property, in the courts for the place where the property is situated;

(q) as regards a claim for limitation of liability arising from the use or operation of a ship, in the court having jurisdiction in the action relating to such liability.

Sub-paragraph (e) is prospectively inserted by SI 2019/1338, reg 3(3)(d):

[(e) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which has jurisdiction to entertain those proceedings, provided that an action of affiliation and aliment shall be treated as a matter relating to maintenance which is not ancillary to proceedings concerning the status of a person;]

Jurisdiction over consumer contracts

3.—(1) In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, subject to rule 5, jurisdiction shall be determined by this rule if—

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in Scotland or, by any means, directs such activities to Scotland or to several places including Scotland, and the contract falls within the scope of such activities.

(2) This rule shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

(3) A consumer may bring proceedings against the other party to a contract only in—

- (a) the courts for the place in which that party is domiciled;
- (b) the courts for the place in which he is himself domiciled; or
- (c) any court having jurisdiction by virtue of rule 2(f) or (i).

(4) Proceedings may be brought against a consumer by the other party to the contract only in the courts for the place where the consumer is domiciled or any court having jurisdiction under rule 2(i).

(5) The provisions of this rule shall not affect the right to bring a counterclaim in the court in which, in accordance with this rule, the original claim is pending.

(6) The provisions of this rule may be departed from only by an agreement—

- (a) which is entered into after the dispute has arisen; or
- (b) which allows the consumer to bring proceedings in courts other than those indicated in this rule; or

(c) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Regulation State, and which confers jurisdiction on the courts of that Regulation State, provided that such an agreement is not contrary to the law of that Regulation State.

Sub-paragraph (6)(c) is omitted by SI 2019/479, reg 61.

Jurisdiction over individual contracts of employment

4.—(1) In matters relating to individual contracts of employment, jurisdiction shall be determined by this rule, without prejudice to rule 2(f).

(2) An employer may be sued—

- (a) in the courts for the place where he is domiciled; or
- (b) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so; or

(c) if the employee does not or did not habitually carry out his work in any one place, in the courts for the place where the business which engaged the employee is or was situated.

(3) An employer may bring proceedings only in the courts for the place in which the employee is domiciled.

(4) The provisions of this rule shall not affect the right to bring a counter-claim in the court in which, in accordance with this rule, the original claim is pending.

(5) The provisions of this rule may be departed from only by an agreement on jurisdiction—

- (a) which is entered into after the dispute has arisen; or
- (b) which allows the employee to bring proceedings in courts other than those indicated in this rule.

Exclusive jurisdiction

5.—(1) Notwithstanding anything contained in any of rules 1 to 4 above or 6 to 9 below but subject to paragraph (3) below, the following courts shall have exclusive jurisdiction:—

(a) in proceedings which have as their object rights in rem in, or tenancies of, immovable property, the courts for the place where the property is situated;

(b) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, the courts for the place where the company, legal person or association has its seat;

(c) in proceedings which have as their object the validity of entries in public registers, the courts for the place where the register is kept;

(d) in proceedings concerned with the enforcement of judgments, the courts for the place where the judgment has been or is to be enforced.

(2) No court shall exercise jurisdiction in a case where immovable property, the seat of a body mentioned in paragraph (1)(b) above, a public register or the place where a judgment has been or is to be enforced is situated outside Scotland and where paragraph (1) would apply if the property, seat, register or, as the case may be, place of enforcement were situated in Scotland.

(3) In proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts for the place in which the defender is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and tenant are domiciled in Scotland.

Prorogation of jurisdiction

6.—(1) If the parties have agreed that a court is to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court shall have jurisdiction.

(2) Such an agreement conferring jurisdiction shall be either—

(a) in writing or evidenced in writing; or

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

(3) Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

(4) The court on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

(5) Where an agreement or a trust instrument confers jurisdiction on the courts of the United Kingdom or of Scotland, proceedings to which paragraph (1) or, as the case may be, (4) above applies may be brought in any court in Scotland.

(6) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of rule 5 or where rule 5(2) applies.

7.—(1) Apart from jurisdiction derived from other provisions of this Schedule, a court before whom a defender enters an appearance shall have jurisdiction.

(2) This rule shall not apply where appearance was entered to contest juris-

diction, or where another court has exclusive jurisdiction by virtue of rule 5 or where rule 5(2) applies.

Examination as to jurisdiction and admissibility

8. Where a court is seised of a claim which is principally concerned with a matter over which another court has exclusive jurisdiction by virtue of rule 5, or where it is precluded from exercising jurisdiction by rule 5(2), it shall declare of its own motion that it has no jurisdiction.

9. Where in any case a court has no jurisdiction which is compatible with this Schedule, and the defender does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction.]

[SCHEDULE 9
PROCEEDINGS EXCLUDED FROM SCHEDULE 8

1 Proceedings concerning the status or legal capacity of natural persons (including proceedings for separation) other than proceedings which consist solely of proceedings [...] of affiliation and aliment.

2 Proceedings for regulating the custody of children.

[2A Proceedings relating to parental responsibilities within the meaning of section 1(3) of the Children (Scotland) Act 1995 or parental rights within the meaning of section 2(4) of that Act.]

3 Proceedings relating to [guardianship of children] and all proceedings relating to the management of the affairs of persons who are incapable of managing their own affairs.

4 Proceedings in respect of sequestration in bankruptcy; or the winding up of a company or other legal person; or proceedings in respect of a judicial arrangement or judicial composition with creditors.

5 Proceedings relating to a company where, by any enactment, jurisdiction in respect of those proceedings is conferred on the court having jurisdiction to wind it up.

6 Admiralty [actions] in so far as the jurisdiction is based on arrestment in rem or ad *fundandam jurisdictionem* of a ship, cargo or freight.

7 Commissary proceedings.

8 Proceedings for the rectification of the register of aircraft mortgages kept by the Civil Aviation Authority.

9 Proceedings under section 7(3) of the Civil Aviation (Eurocontrol) Act 1962 (recovery of charges for air navigation services and proceedings for damages against Eurocontrol).

10 Proceedings brought in pursuance of an order under [section 11 of the Petroleum Act 1998].

11 Proceedings under section 6 of the Protection of Trading Interests Act 1980 (recovery of sums paid or obtained pursuant to a judgment for multiple damages).

12 Appeals from or review of decisions of tribunals.

13 Proceedings which are not in substance proceedings in which a decree against any person is sought.

14 Proceedings brought in any court in pursuance of—

(a) any statutory provision which, in the case of any convention to which Article 57 [, or Article 71 of the Regulation,] applies (conventions relating to specific matters which override the general rules [...]), implements the convention; and

(b) any rule of law so far as it has the effect of implementing any such convention.]

Paragraph 14(a) as amended by SI 2019/479, reg 62:

(a) any statutory provision which, in the case of any convention to which [the United Kingdom is or may become a party and which governs jurisdiction or recognition and enforcement of judgments in relation to a particular matter] implements the convention; and

MATRIMONIAL AND FAMILY PROCEEDINGS ACT 1984
(1984 c 42)

PART IV

FINANCIAL PROVISION IN SCOTLAND AFTER OVERSEAS DIVORCE ETC

28 Circumstances in which a Scottish court may entertain application for financial provision

(1) Where parties to a marriage have been divorced in an overseas country, then, subject to [subsections (3A) and] (4) below, if the jurisdictional requirements and the conditions set out in subsections (2) and (3) below respectively are satisfied, the court may entertain an application by one of the parties for an order for financial provision.

(2) The jurisdictional requirements mentioned in subsection (1) above are that—

(a) the applicant was domiciled or habitually resident in Scotland on the date when the application was made; and

(b) the other party to the marriage—

(i) was domiciled or habitually resident in Scotland on the date when the application was made; or

(ii) was domiciled or habitually resident in Scotland when the parties last lived together as husband and wife; or

(iii) on the date when the application was made, was an owner or tenant of, or had a beneficial interest in, property in Scotland which had at some time been a matrimonial home of the parties; and

(c) where the court is the sheriff court, either—

(i) one of the parties was, on the date when the application was made, habitually resident in the sheriffdom; or

(ii) paragraph (b)(iii) above is satisfied in respect of property wholly or partially within the sheriffdom.

(3) The conditions mentioned in subsection (1) above are that—

(a) the divorce falls to be recognised in Scotland;

(b) the other party to the marriage initiated the proceedings for divorce;

(c) the application was made within five years after the date when the divorce took effect;

(d) a court in Scotland would have had jurisdiction to entertain an action for divorce between the parties if such an action had been brought in Scotland immediately before the foreign divorce took effect;

(e) the marriage had a substantial connection with Scotland; and

(f) both parties are living at the time of the application.

[(3A) If an application or part of an application relates to a matter where jurisdiction falls to be determined by reference to the jurisdictional requirements of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011—

(a) those requirements are to be satisfied in respect of the application, or that part of it, instead of the requirements set out in subsection (2), and

(b) the condition mentioned in subsection (3)(e) does not apply.]

(4) Where the jurisdiction of the court to entertain proceedings under this Part of this Act would fall to be determined by reference to the jurisdictional

requirements imposed by virtue of Part I of the Civil Jurisdiction and Judgments Act 1982 (implementation of certain European conventions) then—

- (a) satisfaction of the requirements of subsection (2) above shall not obviate the need to satisfy the requirements imposed by virtue of Part I of that Act; and
- (b) satisfaction of the requirements imposed by virtue of Part I of that Act shall obviate the need to satisfy the requirements of subsection (2) above; and the court shall entertain or not entertain the proceedings accordingly.

[(5) ‘The Maintenance Regulation’ means Council Regulation (EC) No 4/2009 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.]

Subsection (4) is omitted by SI 2019/479, reg 63.

Subsection 3A as prospectively amended, and subsection (5) as prospectively substituted, by SI 2019/1338, reg 3(3)(e)(ii):

[(3A) If an application or part of an application relates to a matter [*in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18*];]

[(5) ‘The 2007 Hague Convention’ means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.]

29 Disposal of application in Scotland

(1) Subject to subsections (2) to (5) below, Scots law shall apply, with any necessary modifications, in relation to an application under section 28 above as it would apply if the application were being made in an action for divorce in Scotland.

(2) In disposing of an application entertained by it under the said section 28, the court shall exercise its powers so as to place the parties, in so far as it is reasonable and practicable to do so, in the financial position in which they would have been if the application had been disposed of, in an action for divorce in Scotland, on the date on which the foreign divorce took effect.

(3) In determining what is reasonable and practicable for the purposes of subsection (2) above, the court shall have regard in particular to—

- (a) the parties’ resources, present and foreseeable at the date of disposal of the application;
- (b) any order made by a foreign court in or in connection with the divorce proceedings for the making of financial provision in whatever form, or the transfer of property, by one of the parties to the other; and
- (c) subsection (5) below.

(4) Except where subsection (5) below applies, the court may make an order for an interim award of a periodical allowance where—

- (a) it appears from the applicant’s averments that in the disposal of the application an order for financial provision is likely to be made; and
- (b) the court considers that such an interim award is necessary to avoid hardship to the applicant.

(5) Where but for section 28(2)(b)(iii) above the court would not have jurisdiction to entertain the application, the court may make an order—

- (a) relating to the former matrimonial home or its furniture and plenishings; or
 - (b) that the other party to the marriage shall pay to the applicant a capital sum not exceeding the value of that other party’s interest in the former matrimonial home and its furniture and plenishings,
- but shall not be entitled to make any other order for financial provision.

[29A Application of Part IV to annulled marriages

This Part of this Act shall apply to an annulment, of whatever nature, of a

purported marriage, as it applies to a divorce and references to marriage and divorce shall be construed accordingly.]

CHILD ABDUCTION AND CUSTODY ACT 1985
(1985 c 60)

PART I
INTERNATIONAL CHILD ABDUCTION

1 The Hague Convention

(1) In this Part of this Act ‘the Convention’ means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980.

(2) Subject to the provisions of this Part of this Act, the provisions of that Convention set out in Schedule 1 to this Act shall have the force of law in the United Kingdom.

[(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).

(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.]

Subsections (3) and (4) are omitted by SI 2019/479, reg 14.

2 Contracting States

(1) For the purposes of the Convention as it has effect under this Part of this Act the Contracting States other than the United Kingdom shall be those for the time being specified by an Order in Council under this section.

(2) An Order in Council under this section shall specify the date of the coming into force of the Convention as between the United Kingdom and any State specified in the Order; and, except where the Order otherwise provides, the Convention shall apply as between the United Kingdom and that State only in relation to wrongful removals or retentions occurring on or after that date.

(3) Where the Convention applies, or applies only, to a particular territory or particular territories specified in a declaration made by a Contracting State under Article 39 or 40 of the Convention references to that State in subsections (1) and (2) above shall be construed as references to that territory or those territories.

3 Central Authorities

(1) Subject to subsection (2) below, the functions under the Convention of a Central Authority shall be discharged—

- (a) in England and Wales [...] by the Lord Chancellor; and
- (b) in Scotland by the Secretary of State; and
- (c) in Northern Ireland by the Department of Justice in Northern Ireland.]

(2) Any application made under the Convention by or on behalf of a person outside the United Kingdom may be addressed to the Lord Chancellor as the Central Authority in the United Kingdom.

[(3) Where any such application relates to a function to be discharged under subsection (1) above by an authority (‘the responsible authority’) other than the authority to which the application is addressed, the authority to which the application is addressed shall transmit it to the responsible authority.]

4 Judicial authorities

The courts having jurisdiction to entertain applications under the Convention shall be—

- (a) in England and Wales or in Northern Ireland the High Court; and
- (b) in Scotland the Court of Session.

5 Interim powers

Where an application has been made to a court in the United Kingdom under the Convention, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.

6 Reports

Where the Lord Chancellor [, the Department of Justice in Northern Ireland] or the Secretary of State is requested to provide information relating to a child under Article 7(d) of the Convention he may—

- (a) request a local authority or [an officer of the Service] to make a report to him in writing with respect to any matter which appears to him to be relevant;
 - (b) request the Department of Health and Social Services for Northern Ireland to arrange for a suitably qualified person to make such a report to him;
 - (c) request any court to which a written report relating to the child has been made to send him a copy of the report;
- and such a request shall be duly complied with.

7 Proof of documents and evidence

(1) For the purposes of Article 14 of the Convention a decision or determination of a judicial or administrative authority outside the United Kingdom may be proved by a duly authenticated copy of the decision or determination; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.

(2) For the purposes of subsection (1) above a copy is duly authenticated if it bears the seal, or is signed by a judge or officer, of the authority in question.

(3) For the purposes of Articles 14 and 30 of the Convention any such document as is mentioned in Article 8 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

8 Declarations by United Kingdom courts

The High Court or Court of Session may, on an application made for the purposes of Article 15 of the Convention by any person appearing to the court to have an interest in the matter, make a declaration or declarator that the removal of any child from, or his retention outside, the United Kingdom was wrongful within the meaning of Article 3 of the Convention.

9 Suspension of court's powers in cases of wrongful removal

The reference in Article 16 of the Convention to deciding on the merits of rights of custody shall be construed as a reference to—

- (a) making, varying or revoking a custody order, or [a supervision order under section 31 of the Children Act 1989 or Article 50 of the Children Order (Northern Ireland) 1995 (not being a custody order)];

[(aa) enforcing under section 29 of the Family Law Act 1986 a custody order within the meaning of Chapter V of Part I of that Act;]

- (b) registering or enforcing a decision under Part II of this Act;

[(ba) registering or enforcing a decision under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996 ('the 1996 Convention'), except where

provisions of the 1996 Convention are invoked in accordance with Article 50 of the 1996 Convention;]

[...]

[(d) making, varying, amending or revoking a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (including a deemed permanence order having effect by virtue of article 13(1) or 14(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No 4, Transitional and Savings Provisions) Order 2009 (SSI 2009/267))]

[...]

PART II RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS

...

[24A Power to order disclosure of child's whereabouts

(1) Where—

(a) in proceedings for the return of a child under Part I of this Act; or

(b) on an application for the recognition, registration or enforcement of a decision in respect of a child under Part II of this Act,

there is not available to the court adequate information as to where the child is, the court may order any person who it has reason to believe may have relevant information to disclose it to the court.

(2) A person shall not be excused from complying with an order under subsection (1) above by reason that to do so may incriminate him or his spouse [or civil partner] of an offence; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.]

PART III SUPPLEMENTARY

25 Termination of existing custody orders, etc

(1) Where—

(a) an order is made for the return of a child under Part I of this Act; or

(b) a decision with respect to a child (other than a decision mentioned in subsection (2) below) is registered under section 16 of this Act, any custody order relating to him shall cease to have effect.

(2) The decision referred to in subsection (1)(b) above is a decision which is only a decision relating to custody within the meaning of section 16 of this Act by virtue of being a decision relating to rights of access.

[...]

Section 1(2) SCHEDULE 1 CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

CHAPTER 1 – SCOPE OF THE CONVENTION

Article 3

The removal or the retention of a child is to be considered wrongful where—

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised,

either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of sixteen years.

Article 5

For the purposes of this Convention—

(a) ‘rights of custody’ shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;

(b) ‘rights of access’ shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

(a) to discover the whereabouts of a child who has been wrongfully removed or retained;

(b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(d) to exchange, where desirable, information relating to the social background of the child;

(e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child’s habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

(a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

- (b) where available, the date of birth of the child;
 - (c) the grounds on which the applicant's claim for return of the child is based;
 - (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.
- The application may be accompanied or supplemented by—
- (e) an authenticated copy of any relevant decision or agreement;
 - (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
 - (g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested state has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to

physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which

are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

FAMILY LAW ACT 1986
(1986 c 55)

PART I
CHILD CUSTODY

CHAPTER III – JURISDICTION OF COURTS IN SCOTLAND

8 Jurisdiction in independent proceedings

A court in Scotland may entertain an application for a [Part I order] otherwise than in matrimonial [or civil partnership] proceedings only if it has jurisdiction under section 9, 10, 12 or 15(2) of this Act.

9 Habitual residence

Subject to section 11 of this Act, an application for a [Part I order] otherwise than in matrimonial [or civil partnership] proceedings may be entertained by—

- (a) the Court of Session if, on the date of the application, the child concerned is habitually resident in Scotland;
- (b) the sheriff if, on the date of the application, the child concerned is habitually resident in the sheriffdom.

10 Presence of child

Subject to section 11 of this Act, an application for a [Part I order] otherwise than in matrimonial [or civil partnership] proceedings may be entertained by—

- (a) the Court of Session if, on the date of the application, the child concerned—
 - (i) is present in Scotland; and

- (ii) is not habitually resident in any part of the United Kingdom;
- (b) the sheriff if, on the date of the application,—
 - (i) the child is present in Scotland;
 - (ii) the child is not habitually resident in any part of the United Kingdom;
- and
- (iii) either the pursuer or the defender in the application is habitually resident in the sheriffdom.

11 Provisions supplementary to sections 9 and 10

(1) Subject to subsection (2) below, the jurisdiction of the court to entertain an application for a [Part I order] with respect to a child by virtue of section 9, 10 or 15(2) of this Act is excluded if, on the date of the application, matrimonial or civil partnership proceedings are continuing in a court in any part of the United Kingdom in respect of the marriage or civil partnership of the parents of the child.

(2) Subsection (1) above shall not apply in relation to an application for a [Part I order] if the court in which the matrimonial [or civil partnership] proceedings are continuing has made one of the following orders, that is to say—

- (a) an order under section [2A(4)], 13(6) or [19A(4)] of this Act (not being an order made by virtue of section 13(6)(a)(ii)); or
- (b) an order under section 5(2), 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling [Part I proceedings with respect to] the child concerned to be taken in Scotland or, as the case may be, in another court in Scotland,

and that order is in force.

12 Emergency jurisdiction

Notwithstanding that any other court, whether within or outside Scotland, has jurisdiction to entertain an application for a [Part I order], the Court of Session or the sheriff shall have jurisdiction to entertain such an application if—

- (a) the child concerned is present in Scotland or, as the case may be, in the sheriffdom on the date of the application; and
- (b) the Court of Session or sheriff considers that, for the protection of the child, it is necessary to make such an order immediately.

13 Jurisdiction ancillary to matrimonial proceedings

(1) The jurisdiction of a court in Scotland to entertain an application for a [Part I order] in matrimonial or civil partnership proceedings shall be modified by the following provisions of this section.

[(2) A court in Scotland shall not have jurisdiction—

- (a) after the dismissal of matrimonial proceedings or after decree of absolver is granted therein; or
- (b) after the dismissal of civil partnership proceedings,

to entertain an application for a Part I order in those proceedings unless the application therefor was made on or before such dismissal or the granting of the decree of absolver.]

(3) Where, after a decree of separation has been granted, an application is made in the separation process for a [Part I order], a court in Scotland shall not have jurisdiction to entertain that application if, on the date of the application, proceedings for divorce or nullity of marriage [or proceedings for dissolution or nullity of civil partnership] in respect of the marriage [or civil partnership] concerned are continuing in another court in the United Kingdom.

(4) A court in Scotland shall not have jurisdiction to entertain an application for the variation of a [Part I order] made in [matrimonial or civil partnership proceedings where the court has refused to grant the principal remedy sought in the proceedings] if, on the date of the application, matrimonial or [civil partnership]

proceedings in respect of the marriage or [civil partnership] concerned are continuing in another court in the United Kingdom.

(5) Subsections (3) and (4) above shall not apply if the court in which the other proceedings there referred to are continuing has made—

(a) an order under section [2A(4) or 19A(4)] of this Act or under subsection (6) below (not being an order made by virtue of paragraph (a)(ii) of that subsection), or

(b) an order under section 5(2), 14(2) or 22(2) of this Act which is recorded as made for the purpose of enabling [Part I proceedings with respect to] the child concerned to be taken in Scotland or, as the case may be, in another court in Scotland, and that order is in force.

(6) A court in Scotland which has jurisdiction in matrimonial [or civil partnership] proceedings to entertain an application for a [Part I order] with respect to a child may make an order declining such jurisdiction if—

(a) it appears to the court with respect to that child that—

(i) but for section 11(1) of this Act, another court in Scotland would have jurisdiction to entertain an application for a [Part I order], or

(ii) but for section 3(2), 6(3), 20(2) or 23(3) of this Act, a court in another part of the United Kingdom would have jurisdiction to make a [Part I order] or an order varying a [Part I order]; and

(b) the court considers that it would be more appropriate for [Part I matters relating to] that child to be determined in that other court or part.

(7) The court may recall an order made under subsection (6) above.

14 Power of court to refuse application or sist proceedings

(1) A court in Scotland which has jurisdiction to entertain an application for a [Part I order] may refuse the application in any case where the matter in question has already been determined in other proceedings.

(2) Where, at any stage of the proceedings on an application made to a court in Scotland for a [Part I order], it appears to the court—

(a) that proceedings with respect to the matters to which the application relates are continuing outside Scotland or in another court in Scotland;

(b) that it would be more appropriate for those matters to be determined in proceedings outside Scotland or in another court in Scotland and that such proceedings are likely to be taken there [; ...

(c) that it should exercise its powers under Article 15 of the Council Regulation (transfer to a court better placed to hear the case),] [or

(d) that it should exercise its powers under Article 8 of the Hague Convention (request to authority in another Contracting State to assume jurisdiction),] the court may sist the proceedings on that application [or (as the case may be) exercise its powers under Article 15 [of the Council Regulation or Article 8 of the Hague Convention]].

[(3) The court may recall a sist granted in order for it to exercise its powers under Article 8 of the Hague Convention, and withdraw any request made by it to an authority in another Contracting State to assume jurisdiction, if—

(a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the sist, or

(b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.]

Subsection (2) as amended by SSI 2019/104, reg 2:

(2) Where, at any stage of the proceedings on an application made to a court in Scotland for a [Part I order], it appears to the court—

(a) that proceedings with respect to the matters to which the application relates are continuing outside Scotland or in another court in Scotland;

(b) that it would be more appropriate for those matters to be determined in proceedings outside Scotland or in another court in Scotland and that such proceedings are likely to be taken there; [or

[...]

(d) that it should exercise its powers under Article 8 of the Hague Convention (request to authority in another Contracting State to assume jurisdiction), the court may sist the proceedings on that application [or (as the case may be) exercise its powers under [...] Article 8 of the Hague Convention [...]].

15 Duration, variation and recall of orders

(1) Where, after the making by a court in Scotland of a [Part I order] ('the existing order') with respect to a child,—

(a) a [Part I order], or an order varying a [Part I order], competently made by another court in any part of the United Kingdom with respect to that child; or

(b) an order [relating to the parental responsibilities or parental rights in relation to] that child which is made outside the United Kingdom and recognised in Scotland by virtue of section 26 of this Act, [or by virtue of the Council Regulation].

comes into force, the existing order shall cease to have effect so far as it makes provision for any matter for which the same or different provision is made by the order of the other court in the United Kingdom or, as the case may be, the order so recognised.

(2) Subject to sections 11(1) and 13(3) and (4) of this Act, a court in Scotland which has made a [Part I order] ('the original order') may, notwithstanding that it would no longer have jurisdiction to make the original order, make an order varying or recalling the original order; but if the original order has by virtue of subsection (1) above ceased to have effect so far as it makes provision for any matter, the court shall not have power to vary that order under this subsection so as to make provision for that matter.

(3) In subsection (2) above, an order varying an original order means any [Part I order] made with respect to the same child as the original order was made.

(4) [Where, by virtue of subsection (1) above, a child is to live with a different person], then, if there is in force an order made by a court in Scotland providing for the supervision of that child by a local authority, that order shall cease to have effect.

In subsection (1)(b) the words 'or by virtue of the Council Regulation' are omitted by SSI 2019/104, reg 2.

17 Orders for delivery of child

(1) [...] An application by one parent of a child for an order for the delivery of the child from the other parent, where the order is not sought to implement a [Part I order], may be entertained by the Court of Session or a sheriff if, but only if, the Court of Session or, as the case may be, the sheriff would have jurisdiction under this Chapter to make a [Part I order] with respect to the child concerned.

[...]

(3) Subsection (1) above shall apply to an application by one party to a marriage for an order for the delivery of the child concerned from the other party where the child, [although not a child of both parties to the marriage, is a child of the family of those parties] as it applies to an application by one parent of a child for an order for the delivery of the child from the other parent.

[(4) In subsection (3) above, 'child of the family' means any child who has been treated by both parties as a child of their family, except a child who has been placed with those parties as foster parents by a local authority or a voluntary organisation.]

[17A The provisions of this Chapter are subject to Sections 2 and 3 of Chapter II of the Council Regulation [and are subject to the Hague Convention].]

Section 17A as amended by SSI 2019/104, reg 2:

17A The provisions of this Chapter are subject to [...] [the Hague Convention].

18 Interpretation of Chapter III

(1) In this Chapter—

‘child’ means a person who has not attained the age of sixteen;

‘civil partnership proceedings’ means proceedings for dissolution or nullity of a civil partnership or for the separation of the partners in a civil partnership;

‘matrimonial proceedings’ means proceedings for divorce, nullity of marriage or judicial separation.

(2) In this Chapter, ‘the date of the application’ means, where two or more applications are pending, the date of the first of those applications; and, for the purposes of this subsection, an application is pending until a [Part I order] or, in the case of an application mentioned in section 16(1) of this Act, an order relating to the [guardianship of a child], has been granted in pursuance of the application or the court has refused to grant such an order.

CHAPTER V – RECOGNITION AND ENFORCEMENT

25 Recognition of Part I orders: general

(1) Where a [Part I order] made by a court in any part of the United Kingdom is in force with respect to a child who has not attained the age of sixteen, then, subject to subsection (2) below, the order shall be recognised in any other part of the United Kingdom as having the same effect in that other part as if it had been made by the appropriate court in that other part and as if that court had had jurisdiction to make it.

(2) Where a [Part I order] includes provision as to the means by which rights conferred by the order are to be enforced, subsection (1) above shall not apply to that provision.

(3) A court in a part of the United Kingdom in which a [Part I order] is recognised in accordance with subsection (1) above shall not enforce the order unless it has been registered in that part of the United Kingdom under section 27 of this Act and proceedings for enforcement are taken in accordance with section 29 of this Act.

26 Recognition: special Scottish rule

[(1) An order relating to parental responsibilities or parental rights in relation to a child which is made outside the United Kingdom shall be recognised in Scotland if the order was made in the country where the child was habitually resident.]

[(2) Subsection (1) above shall not apply to an order as regards which provision as to recognition is made by [Articles 21 to 27, 41(1) and 42(1)] of the Council Regulation.]

Subsection (2) is omitted by SSI 2019/104, reg 2(5).

27 Registration

(1) Any person on whom any rights are conferred by a [Part I order] may apply to the court which made it for the order to be registered in another part of the United Kingdom under this section.

(2) An application under this section shall be made in the prescribed manner and shall contain the prescribed information and be accompanied by such documents as may be prescribed.

(3) On receiving an application under this section the court which made the [Part I order] shall, unless it appears to the court that the order is no longer in

force, cause the following documents to be sent to the appropriate court in the part of the United Kingdom specified in the application, namely—

- (a) a certified copy of the order, and
 - (b) where the order has been varied, prescribed particulars of any variation which is in force, and
 - (c) a copy of the application and of any accompanying documents.
- (4) Where the prescribed officer of the appropriate court receives a certified copy of a [Part I order] under subsection (3) above, he shall forthwith cause the order, together with particulars of any variation, to be registered in that court in the prescribed manner.

(5) An order shall not be registered under this section in respect of a child who has attained the age of sixteen, and the registration of an order in respect of a child who has not attained the age of sixteen shall cease to have effect on the attainment by the child of that age.

28 Cancellation and variation of registration

(1) A court which revokes, recalls or varies an order registered under section 27 of this Act shall cause notice of the revocation, recall or variation to be given in the prescribed manner to the prescribed officer of the court in which it is registered and, on receiving the notice, the prescribed officer—

- (a) in the case of the revocation or recall of the order, shall cancel the registration, and
- (b) in the case of the variation of the order, shall cause particulars of the variation to be registered in the prescribed manner.

(2) Where—

- (a) an order registered under section 27 of this Act ceases (in whole or in part) to have effect in the part of the United Kingdom in which it was made, otherwise than because of its revocation, recall or variation, or
- (b) an order registered under section 27 of this Act in Scotland ceases (in whole or in part) to have effect there as a result of the making of an order in proceedings outside the United Kingdom.

the court in which the order is registered may, of its own motion or on the application of any person who appears to the court to have an interest in the matter, cancel the registration (or, if the order has ceased to have effect in part, cancel the registration so far as it relates to the provisions which have ceased to have effect).

29 Enforcement

(1) Where a [Part I order] has been registered under section 27 of this Act, the court in which it is registered shall have the same powers for the purpose of enforcing the order as it would have if it had itself made the order and had jurisdiction to make it; and proceedings for or with respect to enforcement may be taken accordingly.

(2) Where an application has been made to any court for the enforcement of an order registered in that court under section 27 of this Act, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.

(3) The references in subsection (1) above to a [Part I order] do not include references to any provision of the order as to the means by which rights conferred by the order are to be enforced.

30 Staying or sisting of enforcement proceedings

(1) Where in accordance with section 29 of this Act proceedings are taken in any court for the enforcement of an order registered in that court, any person who appears to the court to have an interest in the matter may apply for the proceedings to be stayed or sisted on the ground that he has taken or intends to take other proceedings (in the United Kingdom or elsewhere) as a result of which the order

may cease to have effect, or may have a different effect, in the part of the United Kingdom in which it is registered.

[(1A) No application may be made under subsection (1) for proceedings to be stayed or sisted if the proceedings are proceedings on an application for an order under section 110(2) of the Children Act 1989.]

(2) If after considering an application under subsection (1) above the court considers that the proceedings for enforcement should be stayed or sisted in order that other proceedings may be taken or concluded, it shall stay or sist the proceedings for enforcement accordingly.

(3) The court may remove a stay or recall a sist granted in accordance with subsection (2) above if it appears to the court—

(a) that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that subsection, or

(b) that those other proceedings are concluded and that the registered order, or a relevant part of it, is still in force.

(4) Nothing in this section shall affect any power exercisable apart from this section to grant, remove or recall a stay or sist.

31 Dismissal of enforcement proceedings

(1) Where in accordance with section 29 of this Act proceedings are taken in any court for the enforcement of an order registered in that court, any person who appears to the court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in the part of the United Kingdom in which it was made.

[(1A) No application may be made under subsection (1) for proceedings to be dismissed if the proceedings are proceedings on an application for an order under section 110(2) of the Children Act 1989.]

(2) Where in accordance with section 29 of this Act proceedings are taken in the Court of Session for the enforcement of an order registered in that court, any person who appears to the court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in Scotland as a result of the making of an order in proceedings outside the United Kingdom.

(3) If, after considering an application under subsection (1) or (2) above, the court is satisfied that the registered order has ceased to have effect, it shall dismiss the proceedings for enforcement (or, if it is satisfied that the order has ceased to have effect in part, it shall dismiss the proceedings so far as they relate to the enforcement of provisions which have ceased to have effect).

32 Interpretation of Chapter V

(1) In this Chapter—

‘the appropriate court’, in relation to England and Wales or Northern Ireland, means the High Court and, in relation to Scotland, means the Court of Session;

['Part I order'] includes (except where the context otherwise requires) any order within section 1(3) of this Act which, on the assumptions mentioned in subsection (3) below—

(a) could have been made notwithstanding the provisions of this Part;

(b) would have been a [Part I order] for the purposes of this Part; and

(c) would not have ceased to have effect by virtue of section 6, 15 or 23 of this Act.

(2) In the application of this Chapter to Scotland, ['Part I order'] also includes (except where the context otherwise requires) any order within section 1(3) of this Act which, on the assumptions mentioned in subsection (3) below—

(a) would have been a [Part I order] for the purposes of this Part; and

(b) would not have ceased to have effect by virtue of section 6 or 23 of this Act,

and which, but for the provisions of this Part, would be recognised in Scotland under any rule of law.

(3) The said assumptions are—

- (a) that this Part had been in force at all material times; and
- (b) that any reference in section 1 of this Act to any enactment included a reference to any corresponding enactment previously in force.

CHAPTER VI – MISCELLANEOUS AND SUPPLEMENTAL

33 Power to order disclosure of child's whereabouts

(1) Where in proceedings for or relating to a [Part I order] in respect of a child there is not available to the court adequate information as to where the child is, the court may order any person who it has reason to believe may have relevant information to disclose it to the court.

(2) A person shall not be excused from complying with an order under subsection (1) above by reason that to do so may incriminate him or his spouse [or civil partner] of an offence; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.

(3) A court in Scotland before which proceedings are pending for the enforcement of an order [relating to parental responsibilities or parental rights in relation to] a child made outside the United Kingdom which is recognised in Scotland shall have the same powers as it would have under subsection (1) above if the order were its own.

34 Power to order recovery of child

(1) Where—

(a) a person is required by a [Part I order], or an order for the enforcement of a [Part I order], to give up a child to another person ('the person concerned'), and

(b) the court which made the order imposing the requirement is satisfied that the child has not been given up in accordance with the order, the court may make an order authorising an officer of the court or a constable to take charge of the child and deliver him to the person concerned.

(2) The authority conferred by subsection (1) above includes authority—

(a) to enter and search any premises where the person acting in pursuance of the order has reason to believe the child may be found, and

(b) to use such force as may be necessary to give effect to the purpose of the order.

(3) Where by virtue of—

(a) [section 14 of the Children Act 1989, or]

(b) [Article 14 (enforcement of residence orders) of the Children (Northern Ireland) Order 1995,]

a [Part I order] (or a provision of a [Part I order]) may be enforced as if it were an order requiring a person to give up a child to another person, subsection (1) above shall apply as if the [Part I order] had included such a requirement.

(4) This section is without prejudice to any power conferred on a court by or under any other enactment or rule of law.

35 Powers to restrict removal of child from jurisdiction

[...]

(3) A court in Scotland—

(a) at any time after the commencement of proceedings in connection with which the court would have jurisdiction to make [a Part I] order, or

(b) in any proceedings in which it would be competent for the court to grant an interdict prohibiting the removal of a child from its jurisdiction,

may, on an application by any of the persons mentioned in subsection (4) below, grant interdict or interim interdict prohibiting the removal of the child from the United Kingdom or any part of the United Kingdom, or out of the control of the person in [whose care] the child is.

(4) The said persons are—

- (a) any party to the proceedings,
- (b) the [guardian] of the child concerned, and
- (c) any other person who has or wishes to obtain the [...] care of the child.

(5) In subsection (3) above ‘the court’ means the Court of Session or the sheriff; and for the purposes of subsection (3)(a) above, proceedings shall be held to commence—

- (a) in the Court of Session, when a summons is signeted or a petition is presented;
- (b) in the sheriff court, when the warrant of citation is signed.

36 Effect of orders restricting removal

(1) This section applies to any order made by a court in the United Kingdom prohibiting the removal of a child from the United Kingdom or from any specified part of it.

(2) An order to which this section applies shall have effect in each part of the United Kingdom other than the part in which it was made—

- (a) as if it had been made by the appropriate court in that other part, and
- (b) in the case of an order which has the effect of prohibiting the child’s removal to that other part, as if it had included a prohibition on his further removal to any place except one to which he could be removed consistently with the order.

(3) The references in subsections (1) and (2) above to prohibitions on a child’s removal include references to prohibitions subject to exceptions; and in a case where removal is prohibited except with the consent of the court, nothing in subsection (2) above shall be construed as affecting the identity of the court whose consent is required.

(4) In this section ‘child’ means a person who has not attained the age of sixteen; and this section shall cease to apply to an order relating to a child when he attains the age of sixteen.

37 Surrender of passports

(1) Where there is in force an order prohibiting or otherwise restricting the removal of a child from the United Kingdom or from any specified part of it, the court by which the order was in fact made, or by which it is treated under section 36 of this Act as having been made, may require any person to surrender any United Kingdom passport which has been issued to, or contains particulars of, the child.

(2) In this section ‘United Kingdom passport’ means a current passport issued by the Government of the United Kingdom.

38 Automatic restriction on removal of wards of court

(1) The rule of law which (without any order of the court) restricts the removal of a ward of court from the jurisdiction of the court shall, in a case to which this section applies, have effect subject to the modifications in subsection (3) below.

(2) This section applies in relation to a ward of court if—

- (a) proceedings for divorce, nullity or judicial separation in respect of the marriage of his parents are continuing in a court in another part of the United Kingdom (that is to say, in a part of the United Kingdom outside the jurisdiction of the court of which he is a ward),

[(aa) proceedings for dissolution or annulment or legal separation in respect of the civil partnership of his parents are continuing in a court in another part of

the United Kingdom (that is to say, in a part of the United Kingdom outside the jurisdiction of the court of which he is a ward), or]

(b) he is habitually resident in another part of the United Kingdom, except where that other part is Scotland and he has attained the age of sixteen.

(3) Where this section applies, the rule referred to in subsection (1) above shall not prevent—

(a) the removal of the ward of court, without the consent of any court, to the other part of the United Kingdom mentioned in subsection (2) above, or

(b) his removal to any other place with the consent of either the appropriate court in that other part of the United Kingdom or the court mentioned in subsection (2)(a) [or (aa)] above.

39 Duty to furnish particulars of other proceedings

Parties to proceedings for or relating to a [Part I order] shall, to such extent and in such manner as may be prescribed, give particulars of other proceedings known to them which relate to the child concerned (including proceedings instituted abroad and proceedings which are no longer continuing).

40 Interpretation of Chapter VI

(1) In this Chapter—

‘the appropriate court’ has the same meaning as in Chapter V;

[‘Part I order’] includes (except where the context otherwise requires) any such order as is mentioned in section 32(1) of this Act.

(2) In the application of this Chapter to Scotland, [‘Part I order’] also includes (except where the context otherwise requires) any such order as is mentioned in section 32(2) of this Act.

41 Habitual residence after removal without consent, etc

(1) Where a child who—

(a) has not attained the age of sixteen, and

(b) is habitually resident in a part of the United Kingdom,

becomes habitually resident outside that part of the United Kingdom in consequence of circumstances of the kind specified in subsection (2) below, he shall be treated for the purposes of this Part as continuing to be habitually resident in that part of the United Kingdom for the period of one year beginning with the date on which those circumstances arise.

(2) The circumstances referred to in subsection (1) above exist where the child is removed from or retained outside, or himself leaves or remains outside, the part of the United Kingdom in which he was habitually resident before his change of residence—

(a) without the agreement of the person or all the persons having, under the law of that part of the United Kingdom, the right to determine where he is to reside, or

(b) in contravention of an order made by a court in any part of the United Kingdom.

(3) A child shall cease to be treated by virtue of subsection (1) above as habitually resident in a part of the United Kingdom if, during the period there mentioned—

(a) he attains the age of sixteen, or

(b) he becomes habitually resident outside that part of the United Kingdom with the agreement of the person or persons mentioned in subsection (2)(a) above and not in contravention of an order made by a court in any part of the United Kingdom.

42 General interpretation of Part I

(1) In this Part—

‘certified copy’, in relation to an order of any court, means a copy certified by

the prescribed officer of the court to be a true copy of the order or of the official record of the order;

['parental responsibilities' and 'parental rights' have the meanings respectively given by sections 1(3) and 2(4) of the Children (Scotland) Act 1995;]

'part of the United Kingdom' means England and Wales, Scotland or Northern Ireland;

'prescribed' means prescribed by rules of court or act of sederunt;

['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.]

['the Hague Convention' means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996.]

(2) For the purposes of this Part proceedings in England and Wales or in Northern Ireland for divorce, nullity or judicial separation in respect of the marriage of the parents of a child shall, unless they have been dismissed, be treated as continuing until the child concerned attains the age of eighteen (whether or not a decree has been granted and whether or not, in the case of a decree of divorce or nullity of marriage, that decree has been made absolute).

[(2A) For the purposes of this Part proceedings in England and Wales or in Northern Ireland for dissolution, annulment or legal separation in respect of the civil partnership of the parents of the child shall, unless they have been dismissed, be treated as continuing until the child concerned attains the age of eighteen (whether or not a dissolution, nullity or separation order has been made and whether or not, in the case of a dissolution or nullity order, that order has been made final).]

(3) For the purposes of this Part, matrimonial proceedings [or civil partnership proceedings] in a court in Scotland which has jurisdiction in those proceedings to make a [Part I order] with respect to a child shall, unless they have been dismissed or decree of absolver has been granted therein, be treated as continuing until the child concerned attains the age of sixteen.

(4) Any reference in this Part to proceedings in respect of the marriage [or civil partnership] of the parents of a child shall, in relation to a child who, although not a child of both parties to the marriage [or civil partnership], is a child of the family of those parties, be construed as a reference to proceedings in respect of that marriage [or civil partnership]; and for this purpose 'child of the family'—

(a) if the proceedings are in England and Wales, means any child who has been treated by both parties as a child of their family, except a child who [is placed with those parties as foster parents] by a local authority or a voluntary organisation;

(b) if the proceedings are in Scotland, means any child [who has been treated by both parties as a child of their family, except a child who has been placed with those parties as foster parents by a local authority or a voluntary organisation];

(c) if the proceedings are in Northern Ireland, means any child who has been treated by both parties as a child of their family, except a child who [is placed with those parties as foster parents by an authority within the meaning of the Children (Northern Ireland) Order 1995] or a voluntary organisation.

[(4A) Any reference in this Part to proceedings in respect of the civil partnership of the parents of a child shall, in relation to a child who, although not a child of the civil partners, is a child of the family of the civil partners, be construed as a reference to proceedings in respect of that civil partnership; and for this purpose 'child of the family' has the meaning given in paragraphs (a) to (c) of subsection (4) (but substituting references to the civil partners for references to the parties to the marriage).]

(5) References in this Part to Part I orders include (except where the context otherwise requires) references to Part I orders as varied.

(6) For the purposes of this Part each of the following orders shall be treated as varying the [Part I order] to which it relates—

(a) an order which provides for a person [to be allowed contact with or] to be given access to a child who is the subject of a [Part I order], or which makes provision for the education of such a child.

[...]

(7) [In this Part—

(a) references to Part I proceedings in respect of a child are references to any proceedings for a Part I order or an order corresponding to a Part I order and include, in relation to proceedings outside the United Kingdom, references to proceedings before a tribunal or other authority having power under the law having effect there to determine Part I matters; and

(b) references to Part I matters are references to matters that might be determined by a Part I order or an order corresponding to a Part I order.]

In subsection (1) the definition of ‘the Council Regulation’ is omitted by SI 2019/519, reg 15(6) and SSI 2019/104, Sch 1, para 2(6).

PART II

RECOGNITION OF DIVORCES, ANNULMENTS AND LEGAL SEPARATIONS DIVORCES, ANNULMENTS AND JUDICIAL SEPARATIONS GRANTED IN THE BRITISH ISLANDS

44 Recognition in United Kingdom of divorces, annulments and judicial separations granted in the British Islands

(1) Subject to section 52(4) and (5)(a) of this Act, no divorce or annulment obtained in any part of the British Islands shall be regarded as effective in any part of the United Kingdom unless granted by a court of civil jurisdiction.

(2) Subject to section 51 of this Act, the validity of any divorce, annulment or judicial separation granted by a court of civil jurisdiction in any part of the British Islands shall be recognised throughout the United Kingdom.

45 Recognition in the United Kingdom of overseas divorces, annulments and legal separations

[(1) Subject to subsection (2) of this section] and sections 51 and 52 of this Act, the validity of a divorce, annulment or legal separation obtained in a country outside the British Islands (in this Part referred to as an overseas divorce, annulment or legal separation) shall be recognised in the United Kingdom if, and only if, it is entitled to recognition—

(a) by virtue of sections 46 to 49 of this Act, or

(b) by virtue of any enactment other than this Part.

[(2) Subsection (1) and the following provisions of this Part do not apply to an overseas divorce, annulment or legal separation as regards which provision as to recognition is made by [Articles 21 to 27, 41(1) and 42(1)] of the Council Regulation.]

The words ‘subsection (2) of this section and to’ in subsection (1), and subsection (2) are omitted: SSI 2019/104, Sch 1, para 2(7); SI 2019/519, reg 15(7).

46 Grounds for recognition

(1) The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if—

(a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and

(b) at the relevant date either party to the marriage—

- (i) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
 - (ii) was domiciled in that country; or
 - (iii) was a national of that country.
- (2) The validity of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings shall be recognised if—
- (a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained;
 - (b) at the relevant date—
 - (i) each party to the marriage was domiciled in that country; or
 - (ii) either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce, annulment or legal separation is recognised as valid; and
 - (c) neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.
- (3) In this section ‘the relevant date’ means—
- (a) in the case of an overseas divorce, annulment or legal separation obtained by means of proceedings, the date of the commencement of the proceedings;
 - (b) in the case of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings, the date on which it was obtained.
- (4) Where in the case of an overseas annulment, the relevant date fell after the death of either party to the marriage, any reference in subsection (1) or (2) above to that date shall be construed in relation to that party as a reference to the date of death.
- (5) For the purpose of this section, a party to a marriage shall be treated as domiciled in a country if he was domiciled in that country either according to the law of that country in family matters or according to the law of the part of the United Kingdom in which the question of recognition arises.

47 Cross-proceedings and divorces following legal separations

- (1) Where there have been cross-proceedings, the validity of an overseas divorce, annulment or legal separation obtained either in the original proceedings or in the cross-proceedings shall be recognised if—
- (a) the requirements of section 46(1)(b)(i), (ii) or (iii) of this Act are satisfied in relation to the date of the commencement either of the original proceedings or of the cross-proceedings, and
 - (b) the validity of the divorce, annulment or legal separation is otherwise entitled to recognition by virtue of the provisions of this Part.
- (2) Where a legal separation, the validity of which is entitled to recognition by virtue of the provisions of section 46 of this Act or of subsection (1) above is converted, in the country in which it was obtained, into a divorce which is effective under the law of that country, the validity of the divorce shall be recognised whether or not it would itself be entitled to recognition by virtue of those provisions.

48 Proof of facts relevant to recognition

- (1) For the purpose of deciding whether an overseas divorce, annulment or legal separation obtained by means of proceedings is entitled to recognition by virtue of section 46 and 47 of this Act, any finding of fact made (whether expressly or by implication) in the proceedings and on the basis of which jurisdiction was assumed in the proceedings shall—
- (a) if both parties to the marriage took part in the proceedings, be conclusive evidence of the fact found; and
 - (b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this section 'finding of fact' includes a finding that either party to the marriage—

- (a) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
- (b) was under the law of that country domiciled there; or
- (c) was a national of that country.

(3) For the purposes of subsection (1)(a) above, a party to the marriage who has appeared in judicial proceedings shall be treated as having taken part in them.

49 Modifications of Part II in relation to countries comprising territories having different systems of law

(1) In relation to a country comprising territories in which different systems of law are in force in matters of divorce, annulment or legal separation, the provisions of this Part mentioned in subsections (2) to (5) below shall have effect subject to the modifications there specified.

(2) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (1)(b)(i) or (ii) of section 46 of this Act are satisfied, that section and, in the case of a legal separation, section 47(2) of this Act shall have effect as if each territory were a separate country.

(3) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (1)(b)(iii) of section 46 of this Act are satisfied—

- (a) that section shall have effect as if for paragraph (a) of subsection (1) there were substituted the following paragraph—

'(a) the divorce, annulment or legal separation is effective throughout the country in which it was obtained;'; and

- (b) in the case of a legal separation, section 47(2) of this Act shall have effect as if for the words 'is effective under the law of that country' there were substituted the words 'is effective throughout that country'.

(4) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (2)(b) of section 46 of this Act are satisfied, that section and section 52(3) and (4) of this Act and, in the case of a legal separation, section 47(2) of this Act shall have effect as if each territory were a separate country.

(5) Paragraphs (a) and (b) of section 48(2) of this Act shall each have effect as if each territory were a separate country.

50 Non-recognition of divorce or annulment in another jurisdiction no bar to remarriage

Where, in any part of the United Kingdom—

- (a) a divorce or annulment has been granted by a court of civil jurisdiction, or
- (b) the validity of a divorce or annulment is recognised by virtue of this Part,

the fact that the divorce or annulment would not be recognised elsewhere shall not preclude either party to the marriage from [forming a subsequent marriage or civil partnership in that part of the United Kingdom or cause the subsequent marriage or civil partnership of either party (wherever it takes place) to be treated as invalid in that part.]

51 Refusal of recognition

(1) Subject to section 52 of this Act, recognition of the validity of—

- (a) a divorce, annulment or judicial separation granted by a court of civil jurisdiction in any part of the British Islands, or
 - (b) an overseas divorce, annulment or legal separation,
- may be refused in any part of the United Kingdom if the divorce, annulment or

separation was granted or obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the marriage of the parties previously given (whether before or after the commencement of this Part) by a court of civil jurisdiction in that part of the United Kingdom or by a court elsewhere and recognised or entitled to be recognised in that part of the United Kingdom.

(2) Subject to section 52 of this Act, recognition of the validity of—

(a) a divorce or judicial separation granted by a court of civil jurisdiction in any part of the British Islands, or

(b) an overseas divorce or legal separation,

may be refused in any part of the United Kingdom if the divorce or separation was granted or obtained at a time when, according to the law of that part of the United Kingdom (including its rules of private international law and the provisions of this Part), there was no subsisting marriage between the parties.

(3) Subject to section 52 of this Act, recognition by virtue of section 45 of this Act of the validity of an overseas divorce, annulment or legal separation may be refused if—

(a) in the case of a divorce, annulment or legal separation obtained by means of proceedings, it was obtained—

(i) without such steps having been taken for giving notice of the proceedings to a party to the marriage as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or

(ii) without a party to the marriage having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given; or

(b) in the case of a divorce, annulment or legal separation obtained otherwise than by means of proceedings—

(i) there is no official document certifying that the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; or

(ii) where either party to the marriage was domiciled in another country at the relevant date, there is no official document certifying that the divorce, annulment or legal separation is recognised as valid under the law of that other country; or

(c) in either case, recognition of the divorce, annulment or legal separation would be manifestly contrary to public policy.

(4) In this section—

‘official’, in relation to a document certifying that a divorce, annulment or legal separation is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;

‘the relevant date’ has the same meaning as in section 46 of this Act; and subsection (5) of that section shall apply for the purposes of this section as it applies for the purposes of that section.

(5) Nothing in this Part shall be construed as requiring the recognition of any finding of fault made in any proceedings for divorce, annulment or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

52 Provisions as to divorces, annulments etc obtained before commencement of Part II

(1) The provisions of this Part shall apply—

(a) to a divorce, annulment or judicial separation granted by a court of civil

jurisdiction in the British Islands before the date of the commencement of this Part, and

(b) to an overseas divorce, annulment or legal separation obtained before that date,
as well as to one granted or obtained on or after that date.

(2) In the case of such a divorce, annulment or separation as is mentioned in subsection (1)(a) or (b) above, the provisions of this Part shall require or, as the case may be, preclude the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time, but those provisions shall not—

(a) affect any property to which any person became entitled before that date, or

(b) affect the recognition of the validity of the divorce, annulment or separation if that matter has been decided by any competent court in the British Islands before that date.

(3) Subsections (1) and (2) above shall apply in relation to any divorce or judicial separation granted by a court of civil jurisdiction in the British Islands before the date of the commencement of this Part whether granted before or after the commencement of section 1 of the Recognition of Divorces and Legal Separations Act 1971.

(4) The validity of any divorce, annulment or legal separation mentioned in subsection (5) below shall be recognised in the United Kingdom whether or not it is entitled to recognition by virtue of any of the foregoing provisions of this Part.

(5) The divorces, annulments and legal separations referred to in subsection (4) above are—

(a) a divorce which was obtained in the British Islands before 1st January 1974 and was recognised as valid under rules of law applicable before that date;

(b) an overseas divorce which was recognised as valid under the Recognition of Divorces and Legal Separations Act 1971 and was not affected by section 16(2) of the Domicile and Matrimonial Proceedings Act 1973 (proceedings otherwise than in a court of law where both parties resident in United Kingdom);

(c) a divorce of which the decree was registered under section 1 of the Indian and Colonial Divorce Jurisdiction Act 1926;

(d) a divorce or annulment which was recognised as valid under section 4 of the Matrimonial Causes (War Marriages) Act 1944; and

(e) an overseas legal separation which was recognised as valid under the Recognition of Divorces and Legal Separations Act 1971.

54 Interpretation of Part II

(1) In this Part—
'annulment' includes any decree or declarator of nullity of marriage, however expressed;

['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;]

'part of the United Kingdom' means England and Wales, Scotland or Northern Ireland;

'proceedings' means judicial or other proceedings.

(2) In this Part 'country' includes a colony or other dependent territory of the United Kingdom but for the purposes of this Part a person shall be treated as a national of such a territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that territory under that law.

In subsection (1) the definition of 'the Council Regulation' is omitted by SI 2019/519, reg 15(8) and by SSI 2019/104, Sch 1, para 2(8).

RECOGNITION OF TRUSTS ACT 1987
(1987 c 14)

1 Applicable law and recognition of trusts

(1) The provisions of the Convention set out in the Schedule to this Act shall have the force of law in the United Kingdom.

(2) Those provisions shall, so far as applicable, have effect not only in relation to the trusts described in Articles 2 and 3 of the Convention but also in relation to any other trusts of property arising under the law of any part of the United Kingdom or by virtue of a judicial decision whether in the United Kingdom or elsewhere.

(3) In accordance with Articles 15 and 16 such provisions of the law as are there mentioned shall, to the extent there specified, apply to the exclusion of the other provisions of the Convention.

(4) In Article 17 the reference to a State includes a reference to any country or territory (whether or not a party to the Convention and whether or not forming part of the United Kingdom) which has its own system of law.

(5) Article 22 shall not be construed as affecting the law to be applied in relation to anything done or omitted before the coming into force of this Act.

Section 1

SCHEDULE

CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND ON THEIR
RECOGNITION

CHAPTER I – SCOPE

Article 1

This Convention specifies the law applicable to trusts and governs their recognition.

Article 2

For the purposes of this Convention, the term ‘trust’ refers to the legal relationship created – inter vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics—

(a) the assets constitute a separate fund and are not a part of the trustee’s own estate;

(b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;

(c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Article 3

The Convention applies only to trusts created voluntarily and evidenced in writing.

Article 4

The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.

Article 5

The Convention does not apply to the extent that the law specified by Chapter II does not provide for trusts or the category of trusts involved.

CHAPTER II – APPLICABLE LAW

Article 6

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

Where the law chosen under the previous paragraph does not provide for trusts or the category of trust involved, the choice shall not be effective and the law specified in Article 7 shall apply.

Article 7

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

In ascertaining the law with which a trust is most closely connected reference shall be made in particular to—

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;
- (c) the place of residence or business of the trustee;
- (d) the objects of the trust and the places where they are to be fulfilled.

Article 8

The law specified by Article 6 or 7 shall govern the validity of the trust, its construction, its effects and the administration of the trust.

In particular that law shall govern—

- (a) the appointment, resignation and removal of trustees, the capacity to act as a trustee, and the devolution of the office of trustee;
- (b) the rights and duties of trustees among themselves;
- (c) the right of trustees to delegate in whole or in part the discharge of their duties or the exercise of their powers;
- (d) the power of trustees to administer or to dispose of trust assets, to create security interests in the trust assets, or to acquire new assets;
- (e) the powers of investment of trustees;
- (f) restrictions upon the duration of the trust, and upon the power to accumulate the income of the trust;
- (g) the relationships between the trustees and the beneficiaries including the personal liability of the trustees to the beneficiaries;
- (h) the variation or termination of the trust;
- (i) the distribution of the trust assets;
- (j) the duty of trustees to account for their administration.

Article 9

In applying this Chapter a severable aspect of the trust, particularly matters of administration, may be governed by a different law.

Article 10

The law applicable to the validity of the trust shall determine whether that law or the law governing a severable aspect of the trust may be replaced by another law.

CHAPTER III – RECOGNITION

Article 11

A trust created in accordance with the law specified by the preceding Chapter shall be recognised as a trust.

Such recognition shall imply, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear or act in this capacity before a notary or any person acting in an official capacity.

In so far as the law applicable to the trust requires or provides, such recognition shall imply in particular—

- (a) that personal creditors of the trustee shall have no recourse against the trust assets;
- (b) that the trust assets shall not form part of the trustee's estate upon his insolvency or bankruptcy;
- (c) that the trust assets shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee's estate upon his death;
- (d) that the trust assets may be recovered when the trustee, in breach of trust, has mingled trust assets with his own property or has alienated trust assets. However, the rights and obligations of any third party holder of the assets shall remain subject to the law determined by the choice of law rules of the forum.

Article 12

Where the trustee desires to register assets, movable or immovable, or documents of title to them, he shall be entitled, in so far as this is not prohibited by or inconsistent with the law of the State where registration is sought, to do so in his capacity as trustee or in such other way that the existence of the trust is disclosed.

Article 14

The Convention shall not prevent the application of rules of law more favourable to the recognition of trusts.

CHAPTER IV – GENERAL CLAUSES

Article 15

The Convention does not prevent the application of provisions of the law designated by the conflicts rules of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating in particular to the following matters—

- (a) the protection of minors and incapable parties;
- (b) the personal and proprietary effects of marriage;
- (c) succession rights, testate and intestate, especially the indefeasible shares of spouses and relatives;
- (d) the transfer of title to property and security interests in property;
- (e) the protection of creditors in matters of insolvency;
- (f) the protection, in other respects, of third parties acting in good faith.

If recognition of a trust is prevented by application of the preceding paragraph, the court shall try to give effect to the objects of the trust by other means.

Article 16

The Convention does not prevent the application of those provisions of the law of the forum which must be applied even to international situations, irrespective of rules of conflict of laws.

Article 17

In the Convention the word 'law' means the rules of law in force in a State other than its rules of conflict of laws.

Article 18

The provisions of the Convention may be disregarded when their application would be manifestly incompatible with public policy.

Article 22

The Convention applies to trusts regardless of the date on which they were created.

CONTRACTS (APPLICABLE LAW) ACT 1990
(1990, c 36)

The following provisions are reproduced as amended by the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/834).

[1 Meaning of ‘the Rome Convention’

In this Act, a reference to the Rome Convention is a reference to the provisions contained in Schedule 1 which is derived from the Convention on the law applicable to contractual obligations opened for signature in Rome on 19th June 1980.]

2 [Application of the Rome Convention]

(1) [The Rome Convention applies to contracts made on or after 1st April 1991;]

[...]

(3) [The Rome Convention] shall apply in the case of conflicts between the laws of different parts of the United Kingdom.

[...]

3 Interpretation of [the Rome Convention]

(1) [Any question as to the meaning or effect of any provision of the Rome Convention is to be decided in accordance with section 6 of the European Union (Withdrawal) Act 2018 (interpretation of retained EU law)].

[...]

(3) Without prejudice to any practice of the courts as to the matters which may be considered apart from this subsection—

(a) the report on the [Convention on the law applicable to contractual obligations] by Professor Mario Giuliano and Professor Paul Lagarde which is reproduced in the Official Journal of the Communities of 31st October 1980 may be considered in ascertaining the meaning or effect of any provision of [the Rome Convention]. [...]

[...]

[4B Disapplication where the rules in the Rome I Regulation apply: Scotland

(1) Nothing in this Act applies to affect the determination of issues relating to contractual obligations which fall to be determined by the Rome I Regulation.

(2) In this section ‘the Rome I Regulation’ means Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), including that Regulation as applied by regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009 ([application] of Regulation (EC) No 593/2008).

(3) This section extends to Scotland only.]

CHILDREN (SCOTLAND) ACT 1995
(1995 c 36)

14 Jurisdiction and choice of law in relation to certain matters

(1) The Court of Session shall have jurisdiction to entertain an application for an order relating to the administration of a child’s property if the child is habitually resident in, or the property is situated in, Scotland.

(2) A sheriff shall have jurisdiction to entertain such an application if the child is habitually resident in, or the property is situated in, the sheriffdom.

(3) Subject to subsection (4) below, any question arising under this Part of this Act—

(a) concerning—

(i) parental responsibilities or parental rights; or

(ii) the responsibilities or rights of a guardian, in relation to a child shall, in so far as it is not also a question such as is mentioned in paragraph (b) below, be determined by the law of the place of the child's habitual residence at the time when the question arises;

(b) concerning the immediate protection of a child shall be determined by the law of the place where the child is when the question arises; and

(c) as to whether a person is validly appointed or constituted guardian of a child's shall be determined by the law of the place of the child's habitual residence on the date when the appointment was made (the date of death of the testator being taken to be the date of appointment where an appointment was made by will), or the event constituting the guardianship occurred.

(4) Nothing in any provision of law in accordance with which, under subsection (3) above, a question which arises in relation to an application for, or the making of, an order under subsection (1) of section 11 of this Act falls to be determined, shall affect the application of subsection (7) of that section.

[(5) The provisions of sections 9, 11, 13 and this section are subject to Sections 2 and 3 of Chapter II of 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.]

Subsection (5) is omitted by SSI 2019/104, Sch 1, para 3.

**PRIVATE INTERNATIONAL LAW (MISCELLANEOUS PROVISIONS)
ACT 1995
(1995 c 42)**

PART II

VALIDITY OF MARRIAGES UNDER A LAW WHICH PERMITS POLYGAMY

7 Validity and effect in Scots law of potentially polygamous marriages

(1) A person domiciled in Scotland does not lack capacity to enter into a marriage by reason only that the marriage is entered into under a law which permits polygamy.

(2) For the avoidance of doubt, a marriage valid by the law of Scotland and entered into—

(a) under a law which permits polygamy; and

(b) at a time when neither party to the marriage is already married, has, so long as neither party marries a second spouse during the subsistence of the marriage, the same effects for all purposes of the law of Scotland as a marriage entered into under a law which does not permit polygamy.

PART III

CHOICE OF LAW IN TORT AND DELICT

9 Purpose of Part III

(1) The rules in this Part apply for choosing the law (in this Part referred to as 'the applicable law') to be used for determining issues relating to tort or (for the purposes of the law of Scotland) delict.

(2) The characterisation for the purposes of private international law of issues arising in a claim as issues relating to tort or delict is a matter for the courts of the forum.

(3) The rules in this Part do not apply in relation to issues arising in any claim excluded from the operation of this Part by section 13 below.

(4) The applicable law shall be used for determining the issues arising in a claim, including in particular the question whether an actionable tort or delict has occurred.

(5) The applicable law to be used for determining the issues arising in a claim

shall exclude any choice of law rules forming part of the law of the country or countries concerned.

(6) For the avoidance of doubt (and without prejudice to the operation of section 14 below) this Part applies in relation to events occurring in the forum as it applies in relation to events occurring in any other country.

(7) In this Part as it extends to any country within the United Kingdom, 'the forum' means England and Wales, Scotland or Northern Ireland, as the case may be.

(8) In this Part 'delict' includes quasi-delict.

10 Abolition of certain common law rules

The rules of the common law, in so far as they—

(a) require actionability under both the law of the forum and the law of another country for the purpose of determining whether a tort or delict is actionable; or

(b) allow (as an exception from the rules falling within paragraph (a) above) for the law of a single country to be applied for the purpose of determining the issues, or any of the issues, arising in the case in question,
are hereby abolished so far as they apply to any claim in tort or delict which is not excluded from the operation of this Part by section 13 below.

11 Choice of applicable law: the general rule

(1) The general rule is that the applicable law is the law of the country in which the events constituting the tort or delict in question occur.

(2) Where elements of those events occur in different countries, the applicable law under the general rule is to be taken as being—

(a) for a cause of action in respect of personal injury caused to an individual or death resulting from personal injury, the law of the country where the individual was when he sustained the injury;

(b) for a cause of action in respect of damage to property, the law of the country where the property was when it was damaged; and

(c) in any other case, the law of the country in which the most significant element or elements of those events occurred.

(3) In this section 'personal injury' includes disease or any impairment of physical or mental condition.

12 Choice of applicable law: displacement of general rule

(1) If it appears, in all the circumstances, from a comparison of—

(a) the significance of the factors which connect a tort or delict with the country whose law would be the applicable law under the general rule; and

(b) the significance of any factors connecting the tort or delict with another country,

that it is substantially more appropriate for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of the other country, the general rule is displaced and the applicable law for determining those issues or that issue (as the case may be) is the law of that other country.

(2) The factors that may be taken into account as connecting a tort or delict with a country for the purposes of this section include, in particular, factors relating to the parties, to any of the events which constitute the tort or delict in question or to any of the circumstances or consequences of those events.

13 Exclusion of defamation claims from Part III

(1) Nothing in this Part applies to affect the determination of issues arising in any defamation claim.

(2) For the purposes of this section 'defamation claim' means —

(a) any claim under the law of any part of the United Kingdom for libel or slander or for slander of title, slander of goods or other malicious falsehood and any claim under the law of Scotland for verbal injury; and

(b) any claim under the law of any other country corresponding to or otherwise in the nature of a claim mentioned in paragraph (a) above.

14 Transitional provision and savings

(1) Nothing in this Part applies to acts or omissions giving rise to a claim which occur before the commencement of this Part.

(2) Nothing in this Part affects any rules of law (including rules of private international law) except those abolished by section 10 above.

(3) Without prejudice to the generality of subsection (2) above, nothing in this Part—

(a) authorises the application of the law of a country outside the forum as the applicable law for determining issues arising in any claim in so far as to do so—

(i) would conflict with principles of public policy; or

(ii) would give effect to such a penal, revenue or other public law as would not otherwise be enforceable under the law of the forum; or

(b) affects any rules of evidence, pleading or practice or authorises questions of procedure in any proceedings to be determined otherwise than in accordance with the law of the forum.

(4) This Part has effect without prejudice to the operation of any rule of law which either has effect notwithstanding the rules of private international law applicable in the particular circumstances or modifies the rules of private international law that would otherwise be so applicable.

15 Crown application

(1) This Part applies in relation to claims by or against the Crown as it applies in relation to claims to which the Crown is not a party.

(2) In subsection (1) above a reference to the Crown does not include a reference to Her Majesty in Her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall.

(3) Without prejudice to the generality of section 14(2) above, nothing in this section affects any rule of law as to whether proceedings of any description may be brought against the Crown.

[15B Disapplication of Part III where the rules in the Rome II Regulation apply: Scotland

(1) Nothing in this Part applies to affect the determination of issues relating to delict which fall to be determined under the Rome II Regulation.

(2) In subsection (1) 'the Rome II Regulation' means Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II) including that Regulation as applied by regulation 4 of the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008 (conflicts falling within Article 25(2) of Regulation (EC) No 864/2007).

(3) This section extends to Scotland only.]

In subsection (2) the words 'for conflicts falling within Article 25(2)' are substituted by 'application': SI 2019/834, reg 4.

SCOTLAND ACT 1998 (1998 c 46)

Legislation

29 Legislative competence

(1) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

(2) A provision is outside that competence so far as any of the following paragraphs apply—

- (a) it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,
- (b) it relates to reserved matters,
- (c) it is in breach of the restrictions in Schedule 4,
- (d) it is incompatible with any of the Convention rights [in breach of the restriction in section 30A(1)],
- (e) it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

(3) For the purposes of this section, the question whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined, subject to subsection (4), by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.

(4) A provision which—

- (a) would otherwise not relate to reserved matters, but
- (b) makes modifications of Scots private law, or Scots criminal law, as it applies to reserved matters,

is to be treated as relating to reserved matters unless the purpose of the provision is to make the law in question apply consistently to reserved matters and otherwise.

[(5) Subsection 1 is subject to section 30(6).]

30 Legislative competence; supplementary

(1) Schedule 5 (which defines reserved matters) shall have effect.

(2) Her Majesty may by Order in Council make any modifications of Schedule 4 or 5 which She considers necessary or expedient.

(3) Her Majesty may by Order in Council specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Scotland.

(4) An Order in Council under this section may also make such modifications of—

- (a) any enactment or prerogative instrument (including any enactment comprised in or made under this Act), or
- (b) any other instrument or document,

as Her Majesty considers necessary or expedient in connection with other provision made by the Order.

[(5) Subsection (6) applies where any alteration is made—

- (a) to the matters which are reserved matters, or
- (b) to Schedule 4,

(whether by virtue of the making, revocation or expiry of an Order in Council under this section or otherwise).

(6) Where the effect of the alteration is that a provision of an Act of the Scottish Parliament ceases to be within the legislative competence of the Parliament, the provision does not for that reason cease to have effect (unless an enactment provides otherwise).]

[30A Legislative competence: restriction relating to retained EU law

(1) An Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, retained EU law so far as the modification is of a description specified in regulations made by a Minister of the Crown.

(2) But subsection (1) does not apply to any modification so far as it would, immediately before [IP completion day], have been within the legislative competence of the Parliament.

(3) A Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under this section unless—

- (a) the Scottish Parliament has made a consent decision in relation to the laying of the draft, or

(b) the 40 day period has ended without the Parliament having made such a decision.

(4) For the purposes of subsection (3) a consent decision is—

(a) a decision to agree a motion consenting to the laying of the draft,

(b) a decision not to agree a motion consenting to the laying of the draft, or

(c) a decision to agree a motion refusing to consent to the laying of the draft; and a consent decision is made when the Parliament first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).

(5) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (3) must—

(a) provide a copy of the draft to the Scottish Ministers, and

(b) inform the Presiding Officer that a copy has been so provided.

(6) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under this section including a duty to explain any decision to lay a draft without the consent of the Parliament).

(7) No regulations may be made under this section after the end of the period of two years beginning with exit day.

(8) Subsection (7) does not affect the continuation in force of regulations made under this section at or before the end of the period mentioned in that subsection.

(9) Any regulations under this section which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to any Act of the Scottish Parliament which receives Royal Assent after the end of that period.

(10) Subsections (3) to (8) do not apply in relation to regulations which only relate to a revocation of a specification.

(11) In this section—

‘the 40 day period’ means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Scottish Ministers, and, in calculating that period, no account is to be taken of any time during which the Parliament is dissolved or during which it is in recess for more than four days.]

Ministerial functions

57 [EU] law and Convention rights

(1) Despite the transfer to the Scottish Ministers by virtue of section 53 of functions in relation to observing and implementing obligations under [EU] law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(2) A member of the [Scottish Government] has no power to make any subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with any of the Convention rights [...].

(3) Subsection (2) does not apply to an act of the Lord Advocate—

(a) in prosecuting any offence, or

(b) in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland,
[...]

[(4) A member of the Scottish Government has no power to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law and the modification is of a description specified in regulations made by a Minister of the Crown.

(5) But subsection (4) does not apply—

(a) so far as the modification would be within the legislative competence of the Parliament if it were included in an Act of the Scottish Parliament, or

(b) to the making of regulations under [...] [—

- (i) Part 1 or 1B of Schedule 2 to the European Union (Withdrawal) Act 2018 (power to deal with deficiencies arising from withdrawal and certain powers in connection with the EU withdrawal agreement),
- (ii) Schedule 4 to that Act (powers in connection with fees and charges), or
- (iii) section 12, 13 or 14 of the European Union (Withdrawal) Act 2020 (certain powers relating to citizens' rights)]
- (6) A Minister of the Crown must not lay for approval before each House of the Parliament of the United Kingdom a draft of a statutory instrument containing regulations under subsection (4) unless—
- (a) the Scottish Parliament has made a consent decision in relation to the laying of the draft, or
- (b) the 40 day period has ended without the Parliament having made such a decision.
- (7) For the purposes of subsection (6) a consent decision is—
- (a) a decision to agree a motion consenting to the laying of the draft,
- (b) a decision not to agree a motion consenting to the laying of the draft, or
- (c) a decision to agree a motion refusing to consent to the laying of the draft;
- and a consent decision is made when the Parliament first makes a decision falling within any of paragraphs (a) to (c) (whether or not it subsequently makes another such decision).
- (8) A Minister of the Crown who is proposing to lay a draft as mentioned in subsection (6) must—
- (a) provide a copy of the draft to the Scottish Ministers, and
- (b) inform the Presiding Officer that a copy has been so provided.
- (9) See also paragraph 6 of Schedule 7 (duty to make explanatory statement about regulations under subsection (4) including a duty to explain any decision to lay a draft without the consent of the Parliament).
- (10) No regulations may be made under subsection (4) after the end of the period of two years beginning with exit day.
- (11) Subsection (10) does not affect the continuation in force of regulations made under subsection (4) at or before the end of the period mentioned in subsection (10).
- (12) Any regulations under subsection (4) which are in force at the end of the period of five years beginning with the time at which they came into force are revoked in their application to the making, confirming or approving of subordinate legislation after the end of that period.
- (13) Subsections (6) to (11) do not apply in relation to regulations which only relate to a revocation of a specification.
- (14) The restriction in subsection (4) is in addition to any restriction in section 7 of the European Union (Withdrawal) Act 2018 or elsewhere on the power of a member of the Scottish Government to make, confirm or approve any subordinate legislation so far as the legislation modifies retained EU law.
- (15) In this section—
- ‘the 40 day period’ means the period of 40 days beginning with the day on which a copy of the draft instrument is provided to the Scottish Ministers, and, in calculating that period, no account is to be taken of any time during which the Parliament is dissolved or during which it is in recess for more than four days.]

Section 57(1) prospectively omitted by the European Union (Withdrawal) Act 2018, Sch 3, para 13.

Final provisions

126 Interpretation

...

(4) References in this Act to Scots private law are to the following areas of the civil law of Scotland—

- (a) the general principles of private law (including private international law),
- (b) the law of persons (including natural persons, legal persons and unincorporated bodies),
- (c) the law of obligations (including obligations arising from contract, unilateral promise, delict, unjustified enrichment and negotiorum gestio),
- (d) the law of property (including heritable and moveable property, trusts and succession), and
- (e) the law of actions (including jurisdiction, remedies, evidence, procedure, diligence, recognition and enforcement of court orders, limitation of actions and arbitration), and include references to judicial review of administrative action.

...

(9) In this Act—

- (a) all those rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
- (b) all those remedies and procedures from time to time provided for by or under the Community Treaties,

are referred to as 'Community law.'

(10) In this Act, 'international obligations' means any international obligations of the United Kingdom other than obligations to observe and implement Community law or the Convention rights.

...

SCHEDULE 5 RESERVED MATTERS

Foreign affairs etc

7.—(1) International relations, including relations with territories outside the United Kingdom, the [European Union] (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.

(2) Sub-paragraph (1) does not reserve—

- (a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under [EU] law,
- (b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies.

ADOPTION (INTERCOUNTRY ASPECTS) ACT 1999 (1999 c 18)

Implementation of Convention

1 Regulations giving effect to Convention

(1) Subject to the provisions of this Act, regulations made by the Secretary of State may make provision for giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993 ('the Convention').

(2) The text of the Convention (so far as material) is set out in Schedule 1 to this Act.

(3) Regulations under this section may—

- (a) apply, with or without modifications, any provision of the enactments relating to adoption;
- (b) provide that any person who contravenes or fails to comply with any provision of the regulations is to be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both;

- (c) make different provision for different purposes or areas; and
 - (d) make such incidental, supplementary, consequential or transitional provision as appears to the Secretary of State to be expedient.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subject to subsection (6), any power to make subordinate legislation under or for the purposes of the enactments relating to adoption includes power to do so with a view to giving effect to the provisions of the Convention.
- (6) Subsection (5) does not apply in relation to any power which is exercisable by the National Assembly for Wales.
- [(7) References in this section to enactments include references to Acts of the Scottish Parliament.]

SCHEDULE 1 Section 1
 CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN
 RESPECT OF INTERCOUNTRY ADOPTION

The States signatory to the present Convention.

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions—

CHAPTER 1 – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are—

- (a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- (b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

1. The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State

of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

2. The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, subparagraph (c), have not been given before the child attains the age of eighteen years.

CHAPTER II – REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin—

- (a) have established that the child is adoptable;
- (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- (c) have ensured that—
 - (i) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (ii) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (iii) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (iv) the consent of the mother, where required, has been given only after the birth of the child; and
- (d) have ensured, having regard to the age and degree of maturity of the child, that—
 - (i) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (ii) consideration has been given to the child's wishes and opinions,
 - (iii) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (iv) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State—

- (a) have determined that the prospective adoptive parents are eligible and suited to adopt;
- (b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- (c) have determined that the child is or will be authorised to enter and reside permanently in that State.

CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

1. A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

2. Federal States, States with more than one system of law or States having

autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

1. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

2. They shall take directly all appropriate measures to—

(a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

(b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

(a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

(b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

(c) promote the development of adoption counselling and post-adoption services in their States;

(d) provide each other with general evaluation reports about experience with intercountry adoption;

(e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall—

(a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

(b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

(c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall

be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV – PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

1. If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

2. It shall transmit the report to the Central Authority of the State of origin.

Article 16

1. If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—

(a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

(b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

(c) ensure that consents have been obtained in accordance with Article 4; and

(d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

2. It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

(a) the Central Authority of that State has ensured that the prospective adoptive parents agree;

(b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

(c) the Central Authorities of both States have agreed that the adoption may proceed; and

(d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

1. The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
2. The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
3. If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

1. Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—
 - (a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
 - (b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
 - (c) as a last resort, to arrange the return of the child, if his or her interests so require.
2. Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

1. The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
2. Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who—
 - (a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
 - (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
3. A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
4. Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.
5. Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

1. An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

2. Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

1. The recognition of an adoption includes recognition of—

(a) The legal parent-child relationship between the child and his or her adoptive parents;

(b) parental responsibility of the adoptive parents for the child;

(c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

2. In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.

3. The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

Article 27

1. Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect—

(a) if the law of the receiving State so permits; and

(b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.

2. Article 23 applies to the decision converting the adoption.

CHAPTER VI – GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's

parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

1. The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

2. They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

1. No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

3. The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

(a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

(c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;

(d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that

State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

1. The convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States parties to such instrument.

2. Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

IMMIGRATION AND ASYLUM ACT 1999

(1999 c 33)

24 Duty to report suspicious marriages

(1) Subsection (3) applies if—

(a) a superintendent registrar to whom a notice of marriage has been given under section 27 of the Marriage Act 1949,

[(aa) a superintendent registrar, or registrar of births, deaths and marriages, who receives information in advance of a person giving such a notice,]

(b) any other person who, under section 28(2) of that Act, has attested a declaration accompanying such a notice,

(c) a district registrar to whom a marriage notice or an approved certificate has been submitted under section 3 of the Marriage (Scotland) Act 1977,

[(ca) a district registrar who receives information in advance of a person submitting such a notice or certificate,]

(d) a registrar or deputy registrar to whom notice has been given under section 13 of the Marriages (Ireland) Act 1844 or section 4 of the Marriage Law (Ireland) Amendment Act 1863, [or

(da) a registrar or deputy registrar who receives information in advance of a person giving such a notice,]

has reasonable grounds for suspecting that the marriage will be a sham marriage.

(2) Subsection (3) also applies if—

(a) a marriage is solemnized in the presence of a registrar of marriages or, in relation to Scotland, an authorised registrar (within the meaning of the Act of 1977); and

(b) before, during or immediately after solemnization of the marriage, the

registrar has reasonable grounds for suspecting that the marriage will be, or is, a sham marriage.

(3) The person concerned must report his suspicion to the Secretary of State without delay and in such form and manner as may be prescribed by regulations.

(4) The regulations are to be made—

(a) in relation to England and Wales, by the Registrar General for England and Wales with the approval of [the Secretary of State];

(b) in relation to Scotland, by the Secretary of State after consulting the Registrar General of Births, Deaths and Marriages for Scotland;

(c) in relation to Northern Ireland, by the Secretary of State after consulting the Registrar General in Northern Ireland.

[(5) A marriage (whether or not it is void) is a ‘sham marriage’ if—

(a) either, or both, of the parties to the marriage is not a relevant national,

(b) there is no genuine relationship between the parties to the marriage, and

(c) either, or both, of the parties to the marriage enter into the marriage for one or more of these purposes—

(i) avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules;

(ii) enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in the United Kingdom.]

[(6) in subsection (5)—

‘relevant national’ means—

(a) a British citizen,

(b) a national of an EEA State other than the United Kingdom, or

(c) a national of Switzerland;

‘United Kingdom immigration law’ includes any subordinate legislation concerning the right of relevant nationals to move between and reside in member States.]

[24A Duty to report suspicious civil partnerships

(1) Subsection (3) applies if—

(a) a registration authority to whom a notice of proposed civil partnership has been given under section 8 of the Civil Partnership Act 2004,

[(aa) a registration authority that receives information in advance of a person giving such a notice,]

(b) any person who, under section 8 of the 2004 Act, has attested a declaration accompanying such a notice,

(c) a district registrar to whom a notice of proposed civil partnership has been given under section 88 of the 2004 Act,

[(ca) a district registrar who receives information in advance of a person giving such a notice,]

(d) a registrar to whom a civil partnership notice has been given under section 139 of the 2004 Act, [or

(da) a registrar who receives information in advance of a person giving such a notice,]

has reasonable grounds for suspecting that the civil partnership will be a sham civil partnership.

(2) Subsection (3) also applies if—

(a) two people register as civil partners of each other under Part 2, 3 or 4 of the 2004 Act in the presence of the registrar, and

(b) before, during or immediately after they do so, the registrar has reasonable grounds for suspecting that the civil partnership will be, or is, a sham civil partnership.

(3) The person concerned must report his suspicion to the Secretary of State without delay and in such form and manner as may be prescribed by regulations.

(4) The regulations are to be made—

(a) in relation to England and Wales, by the Registrar General for England and Wales with the approval of [the Secretary of State];

(b) in relation to Scotland, by the Secretary of State after consulting the Registrar General of Births, Deaths and Marriages for Scotland;

(c) in relation to Northern Ireland, by the Secretary of State after consulting the Registrar General in Northern Ireland.

[(5) A civil partnership (whether or not it is void) is a ‘sham civil partnership’ if—

(a) either, or both, of the parties to the civil partnership is not a relevant national,

(b) there is no genuine relationship between the parties to the civil partnership, and

(c) either, or both, of the parties to the civil partnership enter into the civil partnership for one or more of these purposes—

(i) avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules;

(ii) enabling a party to the civil partnership to obtain a right conferred by that law or those rules to reside in the United Kingdom.]

[(6) in subsection (5)—

‘relevant national’ means—

(a) a British citizen,

(b) a national of an EEA State other than the United Kingdom, or

(c) a national of Switzerland;

‘United Kingdom immigration law’ includes any subordinate legislation concerning the right of relevant nationals to move between and reside in member States.]]

CIVIL PARTNERSHIP ACT 2004 (2004, c 33)

PART 1 INTRODUCTION

1 Civil partnership

(1) A civil partnership is a relationship between two people (‘civil partners’)—

(a) which is formed when they register as civil partners of each other—

(i) in England or Wales (under Part 2),

(ii) in Scotland (under Part 3),

(iii) in Northern Ireland (under Part 4), or

(iv) outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 (registration at British consulates etc or by armed forces personnel), or

(b) which they are treated under Chapter 2 of Part 5 as having formed (at the time determined under that Chapter) by virtue of having registered an overseas relationship.

(2) Subsection (1) is subject to the provisions of this Act under or by virtue of which a civil partnership is void.

(3) A civil partnership ends only

(a) on death, dissolution or annulment [, or

(b) in the case of a civil partnership formed as mentioned in subsection (1) (a)(i) or (iv), on the conversion of the civil partnership into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013.]

[(3A) Subsection (3) is subject to section 11(2)(a) of the Marriage and Civil Partnership (Scotland) Act 2014 (ending of certain civil partnerships on marriage under Scots law).]

(4) The references in subsection (3) to dissolution and annulment are to dissolution and annulment having effect under or recognised in accordance with this Act.

(5) References in this Act to an overseas relationship are to be read in accordance with Chapter 2 of Part 5.

PART 3 CIVIL PARTNERSHIP: SCOTLAND

85 Formation of civil partnership by registration

(1) For the purposes of section 1, two people are to be regarded as having registered as civil partners of each other once each of them has signed the civil partnership schedule, in the presence of—

- (a) each other,
- (b) two witnesses both of whom have attained the age of 16, and
- [(c) the approved celebrant or, as the case may be, the authorised registrar].

(2) But the two people must be eligible to be so registered.

(3) Subsection (1) applies regardless of whether subsection (4) is complied with.

(4) After the civil partnership schedule has been signed under subsection (1), it must also be signed, in the presence of the civil partners and each other by—

- (a) each of the two witnesses, and
- (b) [the approved celebrant or, as the case may be,] the authorised registrar.

86 Eligibility

(1) Two people are not eligible to register in Scotland as civil partners of each other if—

- (a) they are not of the same sex,
- (b) they are related in a forbidden degree,
- (c) either has not attained the age of 16,
- (d) either is married or already in civil partnership, or
- (e) either is incapable of—
 - (i) understanding the nature of civil partnership, or
 - (ii) validly consenting to its formation.

[(2) Subject to subsection (3), a person is related to another person in a forbidden degree if related to that person in a degree specified in Schedule 10.]

(3) [A person who is related to another person in a degree specified in paragraph 2 of Schedule 10 (relations by affinity) is not related to that person] in a forbidden degree if—

- (a) both persons have attained the age of 21, and
- (b) the younger has not at any time before attaining the age of 18 lived in the same household as the elder and been treated by the elder as a child of the elder's family.

[(3A) For the purposes of paragraph 2 of Schedule 10, 'spouse' means—

- (a) in the case of a marriage between persons of different sexes, a wife in relation to her husband or a husband in relation to his wife, and
- (b) in the case of a marriage between persons of the same sex, one of the parties to the marriage in relation to the other.]

[(4) Paragraph 2 of Schedule 10 has effect subject to the modifications specified in subsection (5) in the case of a person (here the 'relevant person') whose gender has become the acquired gender under the Gender Recognition Act 2004 (c 7).

(5) The reference in [subsection (3A)(a) as it applies to] that paragraph to—

- (a) a [...] wife of the relevant person includes any [...] husband of the relevant person, and
- (b) a [...] husband of the relevant person includes any [...] wife of the relevant person.]

[(5A) This section and Schedule 10 have effect as if any reference in that

Schedule to a [parent] within any of the degrees of relationship specified [...] included a woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008 (c 22).]

[...]

(8) References in this section and in Schedule 10 to relationships and degrees of relationship are to be construed in accordance with section 1(1) of the Law Reform (Parent and Child) (Scotland) Act 1986 (c 9).

(9) For the purposes of this section, a degree of relationship specified in paragraph 1 of Schedule 10 exists whether it is of the full blood or the half blood.

(10) [*Amends Adoption (Scotland) Act 1978.*]

125 Financial provision after overseas dissolution or annulment

Schedule 11 relates to applications for financial provision in Scotland after a civil partnership has been dissolved or annulled in a country or territory outside the British Islands.

PART 5

CIVIL PARTNERSHIPS FORMED OR DISSOLVED ABROAD ETC

Chapter 1

Registration outside UK under Order in Council

210 Registration at British consulates etc

(1) Her Majesty may by Order in Council make provision for two people to register as civil partners of each other—

- (a) in prescribed countries or territories outside the United Kingdom, and
- (b) in the presence of [a registration officer],

in cases where the officer is satisfied that the conditions in subsection (2) are met.

(2) The conditions are that—

- (a) at least one of the proposed civil partners is a United Kingdom national,
- (b) the proposed civil partners would have been eligible to register as civil partners of each other in such part of the United Kingdom as is determined in accordance with the Order,
- (c) the authorities of the country or territory in which it is proposed that they register as civil partners will not object to the registration, and
- (d) insufficient facilities exist for them to enter into an overseas relationship under the law of that country or territory.

(3) [A registration officer] is not required to allow two people to register as civil partners of each other if in his opinion the formation of a civil partnership between them would be inconsistent with international law or the comity of nations.

(4) An Order in Council under this section may make provision for appeals against a refusal, in reliance on subsection (3), to allow two people to register as civil partners of each other.

(5) An Order in Council under this section may provide that two people who register as civil partners of each other under such an Order are to be treated for the purposes of sections 221(1)(c)(i) and (2)(c)(i), 222(c), 224(b), 225(1)(c)(i) and (3)(c)(i), 229(1)(c)(i) and (2)(c)(i) [and section 232(b)] and section 1(3)(c)(i) of the Presumption of Death (Scotland) Act 1977 (c 27) as if they had done so in the part of the United Kingdom determined as mentioned in subsection (2)(b).

[(6) 'Registration officer' means—

- (a) a consular officer in the service of Her Majesty's government in the United Kingdom, or
- (b) in the case of registration of a country [or territory] in which Her Majesty's government in the United Kingdom has for the time being no consular representative, a person authorised by the Secretary of State in respect of registration of civil partnerships in that country [or territory].]

211 Registration by armed forces personnel

(1) Her Majesty may by Order in Council make provision for two people to register as civil partners of each other—

(a) in prescribed countries or territories outside the United Kingdom, and

(b) in the presence of an officer appointed by virtue of the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (c 58), in cases where the officer is satisfied that the conditions in subsection (2) are met.

(2) The conditions are that—

(a) at least one of the proposed civil partners—

(i) is a member of a part of Her Majesty's forces serving in the country or territory,

(ii) is employed in the country or territory in such other capacity as may be prescribed, or

(iii) is a child of a person falling within sub-paragraph (i) or (ii) and has his home with that person in that country or territory,

(b) the proposed civil partners would have been eligible to register as civil partners of each other in such part of the United Kingdom as is determined in accordance with the Order, and

(c) such other requirements as may be prescribed are complied with.

(3) In determining for the purposes of subsection (2) whether one person is the child of another, a person who is or was treated by another as a child of the family in relation to—

(a) a marriage to which the other is or was a party, or

(b) a civil partnership in which the other is or was a civil partner, is to be regarded as the other's child.

(4) An Order in Council under this section may provide that two people who register as civil partners of each other under such an Order are to be treated for the purposes of section 221(1)(c)(i) and (2)(c)(i), 222(c), 224(b), 225(1)(c)(i) and (3)(c)(i), 229(1)(c)(i) and (2)(c)(i) [and section 232(b)] and section 1(3)(c)(i) of the Presumption of Death (Scotland) Act 1977 (c 27) as if they had done so in the part of the United Kingdom determined in accordance with subsection (2)(b).

(5) Any references in this section—

(a) to a country or territory outside the United Kingdom,

(b) to forces serving in such a country or territory, and

(c) to persons employed in such a country or territory,

include references to ships which are for the time being in the waters of a country or territory outside the United Kingdom, to forces serving in any such ship and to persons employed in any such ship.

Chapter 2

Overseas relationships treated as civil partnerships

212 Meaning of 'overseas relationship'

(1) For the purposes of this Act an overseas relationship is a relationship which—

(a) is either a specified relationship or a relationship which meets the general conditions, and

(b) is registered (whether before or after the passing of this Act) with a responsible authority in a country or territory outside the United Kingdom, by two people—

[...]

(ii) neither of whom is already a civil partner or lawfully married.

[[1A] But, for the purposes of the application of this Act to England and Wales marriage is not an overseas relationship.]

(2) In this Chapter, 'the relevant law' means the law of the country or territory

where the relationship is registered (including its rules of private international law).

213 Specified relationships

(1) A specified relationship is a relationship which is specified for the purposes of section 212—

(a) in the case of a relationship registered by two people who under the relevant law are of the same sex when the relationship is registered, by Part 1 of Schedule 20,

(b) in the case of a relationship registered by two people who under the relevant law are not of the same sex when the relationship is registered, by Part 2 of Schedule 20],

[1A] But, for the purposes of the application of this Act to England and Wales, marriage is not an overseas relationship.]

(2) The [Secretary of State] may by order amend [*Part 1 of*] Schedule 20 by—

(a) adding a relationship,

(b) amending the description of a relationship, or

(c) omitting a relationship.

(3) No order may be made under this section [*amending Part 1 of Schedule 20*] without the consent of the Scottish Ministers and the Department of Finance and Personnel.

(4) The power to make an order under this section is exercisable by statutory instrument.

(5) An order which contains any provision (whether alone or with other provisions) amending [*Part 1 of Schedule 20*] by—

(a) amending the description of a relationship, or

(b) omitting a relationship,

may not be made unless a draft of the statutory instrument containing the order is laid before, and approved by a resolution of, each House of Parliament.

(6) A statutory instrument containing any other order under this section [*amending Part 1 of Schedule 20*] is subject to annulment in pursuance of a resolution of either House of Parliament.

[(7) The Scottish Ministers may by regulations amend Part 2 of Schedule 20 by—

(a) adding a relationship,

(b) amending the description of a relationship,

(c) omitting a relationship.

(8) Regulations under subsection (7)—

(a) amending the description of a relationship or omitting a relationship, are subject to the affirmative procedure,

(b) adding a relationship, are subject to the negative procedure.]

214 The general conditions

The general conditions are that, under the relevant law—

(a) the relationship may not be entered into if either of the parties is already a party to a relationship of that kind or lawfully married,

(b) the relationship is of indeterminate duration,

[1(ba) the relationship is not one of marriage,

(c) the effect of entering into it is that the parties are—

(i) treated as a couple either generally or for specified purposes,

(ii) [but are not treated as married].

215 Overseas relationships treated as civil partnerships: the general rule

(1) Two people are to be treated as having formed a civil partnership as a result of having registered an overseas relationship if, under the relevant law, they—

(a) had capacity to enter into the relationship, and

(b) met all requirements necessary to ensure the formal validity of the relationship.

(2) Subject to subsection (3), the time when they are to be treated as having

formed the civil partnership is the time when the overseas relationship is registered (under the relevant law) as having been entered into.

(3) If the overseas relationship is registered (under the relevant law) as having been entered into before this section comes into force, the time when they are to be treated as having formed a civil partnership is the time when this section comes into force.

[(3A) In its application to an overseas relationship between persons of different sexes entered into before this subsection comes into force, subsection (2) is subject to—

- (a) any provision to the contrary made by or under any enactment,*
- (b) regulations under subsection (3B).*

(3B) The Scottish Ministers may by regulations provide for subsection (2)—

- (a) to have effect subject to provision made by the regulations, or*
- (b) not to apply in cases specified in the regulations.*

(3C) Regulations under subsection (3B)—

- (a) may include consequential, supplementary, incidental, transitional, transitory or saving provision,*
- (b) are subject to the negative procedure.]*

(4) But if—

(a) before this section comes into force, a dissolution or annulment of the overseas relationship was obtained outside the United Kingdom, and

(b) the dissolution or annulment would be recognised under Chapter 3 if the overseas relationship had been treated as a civil partnership at the time of the dissolution or annulment,

subsection (3) does not apply and subsections (1) and (2) have effect subject to subsection (5).

(5) The overseas relationship is not to be treated as having been a civil partnership for the purposes of any provisions except—

- (a) Schedules 7, 11 and 17 (financial relief in United Kingdom after dissolution or annulment obtained outside the United Kingdom);
 - (b) such provisions as are specified (with or without modifications) in an order under section 259;
 - (c) Chapter 3 (so far as necessary for the purposes of paragraphs (a) and (b)).
- (6) This section is subject to sections 216, 217 and 218.

216 The same-sex requirement

(1) Two people are not to be treated as having formed a civil partnership as a result of having registered an overseas relationship if, at the critical time, they were not of the same sex under United Kingdom law.

(2) But if a full gender recognition certificate is issued under the 2004 Act to a person who has registered an overseas relationship which is within subsection (4), after the issue of the certificate the relationship is no longer prevented from being treated as a civil partnership on the ground that, at the critical time, the parties were not of the same sex.

(3) However, subsection (2) does not apply to an overseas relationship which is within subsection (4) if either of the parties has formed a subsequent civil partnership or lawful marriage.

(4) An overseas relationship is within this subsection if (and only if), at the time mentioned in section 215(2)—

- (a) one of the parties ('A') was regarded under the relevant law as having changed gender (but was not regarded under United Kingdom law as having done so), and
- (b) the other party was (under United Kingdom law) of the gender to which A had changed under the relevant law.

(5) In this section—

‘the critical time’ means the time determined in accordance with section 215(2) or (as the case may be) (3);

‘the 2004 Act’ means the Gender Recognition Act 2004 (c 7);

‘United Kingdom law’ means any enactment or rule of law applying in England and Wales, Scotland and Northern Ireland.

(6) Nothing in this section prevents the exercise of any enforceable [EU] right.

Section 216 is prospectively repealed by the Civil Partnership (Scotland) Act 2020, s 2.

217 Person domiciled in a part of the United Kingdom

(1) Subsection (2) applies if an overseas relationship has been registered by a person who was at the time mentioned in section 215(2) domiciled in England and Wales.

(2) The two people concerned are not to be treated as having formed a civil partnership if, at the time mentioned in section 215(2)—

(a) either of them was under 16, or

(b) they would have been within prohibited degrees of relationship under Part 1 of Schedule 1 if they had been registering as civil partners of each other in England and Wales.

(3) Subsection (4) applies if an overseas relationship has been registered by a person who at the time mentioned in section 215(2) was domiciled in Scotland.

(4) The two people concerned are not to be treated as having formed a civil partnership if, at the time mentioned in section 215(2), they were not eligible by virtue of paragraph (b), (c) or (e) of section 86(1) to register in Scotland as civil partners of each other.

(5) Subsection (6) applies if an overseas relationship has been registered by a person who at the time mentioned in section 215(2) was domiciled in Northern Ireland.

(6) The two people concerned are not to be treated as having formed a civil partnership if, at the time mentioned in section 215(2)—

(a) either of them was under 16, or

(b) they would have been within prohibited degrees of relationship under Schedule 12 if they had been registering as civil partners of each other in Northern Ireland.

218 The public policy exception

Two people are not to be treated as having formed a civil partnership as a result of having entered into an overseas relationship if it would be manifestly contrary to public policy to recognise the capacity, under the relevant law, of one or both of them to enter into the relationship.

Chapter 3

Dissolution etc: jurisdiction and recognition

Introduction

219 Power to make provision corresponding to EC Regulation 2201/2003

(1) The Lord Chancellor may by regulations make provision—

(a) as to the jurisdiction of courts in England and Wales [...] in proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners in cases where a civil partner—

(i) is or has been habitually resident in a member State,

(ii) is a national of a member State, or

(iii) is domiciled in a part of the United Kingdom or the Republic of Ireland, and

(b) as to the recognition in England and Wales [...] of any judgment of a

court of another member State which orders the dissolution or annulment of a civil partnership or the legal separation of the civil partners.

[(1A) The Department of Justice in Northern Ireland may by regulations make provision—

(a) as to the jurisdiction of courts in Northern Ireland in proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners in such cases as are mentioned in subsection (1)(a), and

(b) as to the recognition in Northern Ireland of any such judgment as is mentioned in subsection (1)(b).]

(2) The Scottish Ministers may by regulations make provision—

(a) as to the jurisdiction of courts in Scotland in proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners in such cases as are mentioned in subsection (1)(a), and

(b) as to the recognition in Scotland of any such judgment as is mentioned in subsection (1)(b).

(3) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27th November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.

(4) The regulations may provide that for the purposes of this Part and the regulations ‘member State’ means—

(a) all member States with the exception of such member States as are specified in the regulations, or

(b) such member States as are specified in the regulations.

(5) The regulations may make provision under subsections (1)(b) [, (1A)(b)] and (2)(b) which applies even if the date of the dissolution, annulment or legal separation is earlier than the date on which this section comes into force.

(6) Regulations under subsection (1) are to be made by statutory instrument and may only be made if a draft has been laid before and approved by resolution of each House of Parliament.

[(6A) Regulations under subsection (1A) are to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

(6B) No regulations shall be made under subsection (1A) unless a draft has been laid before and approved by resolution of the Northern Ireland Assembly.

(6C) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6B) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.]

(7) Regulations under subsection (2) are to be made by statutory instrument and may only be made if a draft has been laid before and approved by resolution of the Scottish Parliament.

(8) In this Part ‘section 219 regulations’ means regulations made under this section.

Section 219 is omitted by SSI 2019/104, reg 4.

Jurisdiction of Scottish courts

225 Jurisdiction of Scottish courts

(1) The Court of Session has jurisdiction to entertain an action for the dissolution of a civil partnership or for separation of civil partners if (and only if)—

(a) the court has jurisdiction under section 219 regulations,

(b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either civil partner is domiciled in Scotland on the date when the proceedings are begun, or

(c) the following conditions are met—

(i) the two people concerned registered as civil partners of each other in Scotland,

(ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and

(iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

(2) The sheriff has jurisdiction to entertain an action for the dissolution of a civil partnership or for separation of civil partners if (and only if) the requirements of paragraph (a) or (b) of subsection (1) are met and either civil partner—

(a) was resident in the sheriffdom for a period of 40 days ending with the date when the action is begun, or

(b) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date and has no known residence in Scotland at that date.

(3) The Court of Session has jurisdiction to entertain an action for declarator of nullity of a civil partnership if (and only if)—

(a) the Court has jurisdiction under section 219 regulations,

(b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either of the ostensible civil partners—

(i) is domiciled in Scotland on the date when the proceedings are begun, or

(ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of 1 year ending with the date of death, or

(c) the following conditions are met—

(i) the two people concerned registered as civil partners of each other in Scotland,

(ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and

(iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

[(3A) The sheriff has jurisdiction to entertain an action for declarator of nullity of a civil partnership if (and only if)—

(a) the requirements as to domicile or habitual residence that would apply were the action to have been begun in the Court of Session under subsection (3) (other than paragraph (c)) are met, and

(b) either of the ostensible civil partners—

(i) was resident in the sheriffdom for a period of 40 days ending with the date when the action is begun, or

(ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date and has no known residence in Scotland at that date.]

(4) At any time when proceedings are pending in respect of which a court has jurisdiction by virtue of any of subsections (1) to [(3A)] (or this subsection) it also has jurisdiction to entertain other proceedings, in respect of the same civil partnership (or ostensible civil partnership), for dissolution, separation or [...] declarator of nullity, even though that jurisdiction would not be exercisable under any of subsections (1) to [(3A)].

Section 225(1) and (3) as amended by SSI 2019/104, Sch 1, para 4(2):

(1) The Court of Session has jurisdiction to entertain an action for the dissolution of a civil partnership or for separation of civil partners if (and only if) [either civil partner]—

[(a) is domiciled in Scotland on the date when proceedings are begun, or

(b) was habitually resident in Scotland throughout the period of one year ending with the date, or]

(c) the following conditions are met—

(i) the two people concerned registered as civil partners of each other in Scotland,

- (ii) no court has, or is recognised as having, jurisdiction [...], and
 - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (3) The Court of Session has jurisdiction to entertain an action for declarator of nullity of civil partnership if (and only if)—
- (a) either of the ostensible civil partners—
 - (i) is domiciled in Scotland on the date when the proceedings are begun or was habitually resident in Scotland throughout the period of one year ending with that date, or
 - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of 1 year ending with the date of death, or]
 - (b) [...]
 - (i) the two people concerned registered as civil partners of each other in Scotland,
 - (ii) no court has, or is recognised as having, jurisdiction [...], and
 - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.

226 Sisting of proceedings

- (1) Rules of court may make provision in relation to civil partnerships corresponding to the provision made in relation to marriages by Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 (c 45) (sisting of Scottish consistorial actions).
- (2) The rules may in particular make provision—
- (a) for the provision of information by the pursuer and by any other person who has entered appearance in an action where proceedings relating to the same civil partnership (or ostensible civil partnership) are continuing in another jurisdiction, and
 - (b) for an action to be sisted where there are concurrent proceedings elsewhere in respect of the same civil partnership (or ostensible civil partnership).

227 Scottish ancillary and collateral orders

- (1) This section applies where after the commencement of this Act an application is competently made to the Court of Session or the sheriff for the making, or the variation or recall, of an order which is ancillary or collateral to an action for—
- (a) the dissolution of a civil partnership,
 - (b) the separation of civil partners, or
 - (c) declarator of nullity of a civil partnership.
- (2) And the section applies whether the application is made in the same proceedings or in other proceedings and whether it is made before or after the pronouncement of a final decree in the action.
- (3) [Subject to subsections (3A) and (3B), if] the court has or, as the case may be, had jurisdiction to entertain the action, it has jurisdiction to entertain [the application.
- (3A) The court may not entertain the application if—
- (a) jurisdiction to entertain the action was under section 219 regulations, and
 - (b) to make, vary or recall the order to which the application relates would contravene the regulations.
- [(3B) If the application or part of it relates to a matter where jurisdiction falls to be determined by reference to the jurisdictional requirements of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011, the court may not entertain the application or that part of it unless it has jurisdiction to do so by virtue of that Regulation and that Schedule.]

(4) Where the Court of Session has jurisdiction by virtue of this section to entertain an application for the variation or recall, as respects any person, of an order made by it and the order is one to which section 8 (variation and recall by the sheriff of certain orders made by the Court of Session) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (c 19) applies, then for the purposes of any application under that section for the variation or recall of the order in so far as it relates to the person, the sheriff (as defined in that section) has jurisdiction to exercise the power conferred on him by that section.

(5) The reference in subsection (1) to an order which is ancillary or collateral is to an order relating to children, aliment, financial provision or expenses.

[(6) In this section ‘the Maintenance Regulation’ means Council Regulation (EC) No 4/2009 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.]

Section 227(3)–(3B) and (6) as amended by SSI 2019/104, Sch 1, para 4(4) and prospectively amended by SI 2019/1338, reg 3(1)(j):

(3) [...] If the court has or, as the case may be, had jurisdiction to entertain the action, it has jurisdiction to entertain the application. [This subsection is subject to subsection (3B).]

[...]

(3B) If the application or part of it relates to a matter [*in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18*].]

[(6) In this section [*the ‘2007 Hague Convention’ means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague*].]

Recognition of dissolution, annulment and separation

233 Effect of dissolution, annulment or separation obtained in the UK

(1) No dissolution or annulment of a civil partnership obtained in one part of the United Kingdom is effective in any part of the United Kingdom unless obtained from a court of civil jurisdiction.

(2) Subject to subsections (3) and (4), the validity of a dissolution or annulment of a civil partnership or a legal separation of civil partners which has been obtained from a court of civil jurisdiction in one part of the United Kingdom is to be recognised throughout the United Kingdom.

(3) Recognition of the validity of a dissolution, annulment or legal separation obtained from a court of civil jurisdiction in one part of the United Kingdom may be refused in any other part if the dissolution, annulment or separation was obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the civil partnership—

(a) previously given by a court of civil jurisdiction in the other part, or

(b) previously given by a court elsewhere and recognised or entitled to be recognised in the other part.

(4) Recognition of the validity of a dissolution or legal separation obtained from a court of civil jurisdiction in one part of the United Kingdom may be refused in any other part if the dissolution or separation was obtained at a time when, according to the law of the other part, there was no subsisting civil partnership.

234 Recognition in the UK of overseas dissolution, annulment or separation

(1) Subject to subsection (2), the validity of an overseas dissolution, annulment or legal separation is to be recognised in the United Kingdom if, and only if, it is entitled to recognition by virtue of sections 235 to 237.

(2) This section and sections 235 to 237 do not apply to an overseas dissolution,

annulment or legal separation as regards which provision as to recognition is made by section 219 regulations.

(3) For the purposes of subsections (1) and (2) and sections 235 to 237, an overseas dissolution, annulment or legal separation is a dissolution or annulment of a civil partnership or a legal separation of civil partners which has been obtained outside the United Kingdom (whether before or after this section comes into force).

Section 234 as amended by SSI 2019/104, Sch 1, para 4(5):

(1) [...] The validity of an overseas dissolution, annulment or legal separation is to be recognised in the United Kingdom if, and only if, it is entitled to recognition by virtue of sections 235 to 237.

[...]

(3) For the purposes of [subsection (1)] and sections 235 to 237, an overseas dissolution, annulment or legal separation is a dissolution or annulment of a civil partnership or a legal separation of civil partners which has been obtained outside the United Kingdom (whether before or after this section comes into force).

235 Grounds for recognition

(1) The validity of an overseas dissolution, annulment or legal separation obtained by means of proceedings is to be recognised if—

- (a) the dissolution, annulment or legal separation is effective under the law of the country in which it was obtained, and
- (b) at the relevant date either civil partner—
 - (i) was habitually resident in the country in which the dissolution, annulment or legal separation was obtained,
 - (ii) was domiciled in that country, or
 - (iii) was a national of that country.

(2) The validity of an overseas dissolution, annulment or legal separation obtained otherwise than by means of proceedings is to be recognised if—

- (a) the dissolution, annulment or legal separation is effective under the law of the country in which it was obtained,
- (b) at the relevant date—
 - (i) each civil partner was domiciled in that country, or
 - (ii) either civil partner was domiciled in that country and the other was domiciled in a country under whose law the dissolution, annulment or legal separation is recognised as valid, and
 - (c) neither civil partner was habitually resident in the United Kingdom throughout the period of 1 year immediately preceding that date.

(3) In this section ‘the relevant date’ means—

- (a) in the case of an overseas dissolution, annulment or legal separation obtained by means of proceedings, the date of the commencement of the proceedings;
- (b) in the case of an overseas dissolution, annulment or legal separation obtained otherwise than by means of proceedings, the date on which it was obtained.

(4) Where in the case of an overseas annulment the relevant date fell after the death of either civil partner, any reference in subsection (1) or (2) to that date is to be read in relation to that civil partner as a reference to the date of death.

236 Refusal of recognition

(1) Recognition of the validity of an overseas dissolution, annulment or legal separation may be refused in any part of the United Kingdom if the dissolution, annulment or separation was obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the civil partnership—

(a) previously given by a court of civil jurisdiction in that part of the United Kingdom, or

(b) previously given by a court elsewhere and recognised or entitled to be recognised in that part of the United Kingdom.

(2) Recognition of the validity of an overseas dissolution or legal separation may be refused in any part of the United Kingdom if the dissolution or separation was obtained at a time when, according to the law of that part of the United Kingdom, there was no subsisting civil partnership.

(3) Recognition of the validity of an overseas dissolution, annulment or legal separation may be refused if—

(a) in the case of a dissolution, annulment or legal separation obtained by means of proceedings, it was obtained—

(i) without such steps having been taken for giving notice of the proceedings to a civil partner as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken, or

(ii) without a civil partner having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given, or

(b) in the case of a dissolution, annulment or legal separation obtained otherwise than by means of proceedings—

(i) there is no official document certifying that the dissolution, annulment or legal separation is effective under the law of the country in which it was obtained, or

(ii) where either civil partner was domiciled in another country at the relevant date, there is no official document certifying that the dissolution, annulment or legal separation is recognised as valid under the law of that other country, or

(c) in either case, recognition of the dissolution, annulment or legal separation would be manifestly contrary to public policy.

(4) In this section—

‘official’, in relation to a document certifying that a dissolution, annulment or legal separation is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;

‘the relevant date’ has the same meaning as in section 235.

237 Supplementary provisions relating to recognition of dissolution etc

(1) For the purposes of sections 235 and 236, a civil partner is to be treated as domiciled in a country if he was domiciled in that country—

(a) according to the law of that country in family matters, or

(b) according to the law of the part of the United Kingdom in which the question of recognition arises.

(2) The Lord Chancellor [, the Department of Justice in Northern Ireland] or the Scottish Ministers may by regulations make provision—

(a) applying sections 235 and 236 and subsection (1) with modifications in relation to any country whose territories have different systems of law in force in matters of dissolution, annulment or legal separation;

(b) applying sections 235 and 236 with modifications in relation to—

(i) an overseas dissolution, annulment or legal separation in the case of an overseas relationship (or an apparent or alleged overseas relationship);

(ii) any case where a civil partner is domiciled in a country or territory whose law does not recognise legal relationships between two people of the same sex;

(c) with respect to recognition of the validity of an overseas dissolution, annulment or legal separation in cases where there are cross-proceedings;

(d) with respect to cases where a legal separation is converted under the law

of the country or territory in which it is obtained into a dissolution which is effective under the law of that country or territory;

(e) with respect to proof of findings of fact made in proceedings in any country or territory outside the United Kingdom.

(3) The power [of the Lord Chancellor or the Scottish Ministers] to make regulations under subsection (2) is exercisable by statutory instrument.

(4) A statutory instrument containing such regulations—

(a) if made by the Lord Chancellor, is subject to annulment in pursuance of a resolution of either House of Parliament;

(b) if made by the Scottish Ministers, is subject to annulment in pursuance of a resolution of the Scottish Parliament.

[(4A) The power of the Department of Justice in Northern Ireland to make regulations under subsection (2) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

(4B) Regulations made by the Department of Justice under subsection (2) are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.]

(5) In this section (except subsection (4)) and sections 233 to 236 and 238—
'annulment' includes any order annulling a civil partnership, however expressed;

'part of the United Kingdom' means England and Wales, Scotland or Northern Ireland;

'proceedings' means judicial or other proceedings.

(6) Nothing in this Chapter is to be read as requiring the recognition of any finding of fault made in proceedings for dissolution, annulment or legal separation or of any maintenance, custody or other ancillary order made in any such proceedings.

238 Non-recognition elsewhere of dissolution or annulment

(1) This section applies where, in any part of the United Kingdom—

(a) a dissolution or annulment of a civil partnership has been granted by a court of civil jurisdiction, or

(b) the validity of a dissolution or annulment of a civil partnership is recognised by virtue of this Chapter.

(2) The fact that the dissolution or annulment would not be recognised outside the United Kingdom does not—

(a) preclude either party from forming a subsequent civil partnership or marriage in that part of the United Kingdom, or

(b) cause the subsequent civil partnership or marriage of either party (wherever it takes place) to be treated as invalid in that part.

FAMILY LAW (SCOTLAND) ACT 2006 (2006 asp 2)

4 Extension of jurisdiction of sheriff

In subsection (1) of section 5 of the Sheriff Courts (Scotland) Act 1907 (c 51) (extension of jurisdiction), the words '(except declarators of marriage or nullity of marriage)' shall be repealed.

22 Domicile of persons under 16

(1) Subsection (2) applies where—

(a) the parents of a child are domiciled in the same country as each other; and

(b) the child has a home with a parent or a home (or homes) with both of them.

(2) The child shall be domiciled in the same country as the child's parents.

(3) Where subsection (2) does not apply, the child shall be domiciled in the country with which the child has for the time being the closest connection.

(4) In this section, 'child' means a person under 16 years of age.

Cohabitation

25 Meaning of 'cohabitant' in sections 26 to 29

(1) In sections 26 to 29, 'cohabitant' means either member of a couple consisting of—

(a) a man and a woman who are (or were) living together as if they were husband and wife; or

(b) two persons of the same sex who are (or were) living together as if they were civil partners.

(2) In determining for the purposes of any of sections 26 to 29 whether a person ('A') is a cohabitant of another person ('B'), the court shall have regard to—

(a) the length of the period during which A and B have been living together (or lived together);

(b) the nature of their relationship during that period; and

(c) the nature and extent of any financial arrangements subsisting, or which subsisted, during that period.

(3) In subsection (2) and section 28, 'court' means Court of Session or sheriff.

26 Rights in certain household goods

(1) Subsection (2) applies where any question arises (whether during or after the cohabitation) as to the respective rights of ownership of cohabitants in any household goods.

(2) It shall be presumed that each cohabitant has a right to an equal share in household goods acquired (other than by gift or succession from a third party) during the period of cohabitation.

(3) The presumption in subsection (2) shall be rebuttable.

(4) In this section, 'household goods' means any goods (including decorative or ornamental goods) kept or used at any time during the cohabitation in any residence in which the cohabitants are (or were) cohabiting for their joint domestic purposes; but does not include—

(a) money;

(b) securities;

(c) any motor car, caravan or other road vehicle; or

(d) any domestic animal.

27 Rights in certain money and property

(1) Subsection (2) applies where, in relation to cohabitants, any question arises (whether during or after the cohabitation) as to the right of a cohabitant to—

(a) money derived from any allowance made by either cohabitant for their joint household expenses or for similar purposes; or

(b) any property acquired out of such money.

(2) Subject to any agreement between the cohabitants to the contrary, the money or property shall be treated as belonging to each cohabitant in equal shares.

(3) In this section 'property' does not include a residence used by the cohabitants as the sole or main residence in which they live (or lived) together.

28 Financial provision where cohabitation ends otherwise than by death

(1) Subsection (2) applies where cohabitants cease to cohabit otherwise than by reason of the death of one (or both) of them.

(2) On the application of a cohabitant (the 'applicant'), the appropriate court may, after having regard to the matters mentioned in subsection (3)—

(a) make an order requiring the other cohabitant (the 'defender') to pay a capital sum of an amount specified in the order to the applicant;

(b) make an order requiring the defender to pay such amount as may be

specified in the order in respect of any economic burden of caring, after the end of the cohabitation, for a child of whom the cohabitants are the parents;

(c) make such interim order as it thinks fit.

(3) Those matters are—

(a) whether (and, if so, to what extent) the defender has derived economic advantage from contributions made by the applicant; and

(b) whether (and, if so, to what extent) the applicant has suffered economic disadvantage in the interests of—

(i) the defender; or

(ii) any relevant child.

(4) In considering whether to make an order under subsection (2)(a), the appropriate court shall have regard to the matters mentioned in subsections (5) and (6).

(5) The first matter is the extent to which any economic advantage derived by the defender from contributions made by the applicant is offset by any economic disadvantage suffered by the defender in the interests of—

(a) the applicant; or

(b) any relevant child.

(6) The second matter is the extent to which any economic disadvantage suffered by the applicant in the interests of—

(a) the defender; or

(b) any relevant child,

is offset by any economic advantage the applicant has derived from contributions made by the defender.

(7) In making an order under paragraph (a) or (b) of subsection (2), the appropriate court may specify that the amount shall be payable—

(a) on such date as may be specified;

(b) in instalments.

(8) [Subject to section 29A,] any application under this section shall be made not later than one year after the day on which the cohabitants cease to cohabit.

(9) In this section—

‘appropriate court’ means—

(a) where the cohabitants are a man and a woman, the court which would have jurisdiction to hear an action of divorce in relation to them if they were married to each other;

(b) where the cohabitants are of the same sex, the court which would have jurisdiction to hear an action for the dissolution of the civil partnership if they were civil partners of each other;

‘child’ means a person under 16 years of age;

‘contributions’ includes indirect and non-financial contributions (and, in particular, any such contribution made by looking after any relevant child or any house in which they cohabited); and

‘economic advantage’ includes gains in—

(a) capital;

(b) income; and

(c) earning capacity;

and ‘economic disadvantage’ shall be construed accordingly.

(10) For the purposes of this section, a child is ‘relevant’ if the child is—

(a) a child of whom the cohabitants are the parents;

(b) a child who is or was accepted by the cohabitants as a child of the family.

29 Application to court by survivor for provision on intestacy

(1) This section applies where—

(a) a cohabitant (the ‘deceased’) dies intestate; and

(b) immediately before the death the deceased was—

(i) domiciled in Scotland; and

(ii) cohabiting with another cohabitant (the ‘survivor’).

- (2) Subject to subsection (4), on the application of the survivor, the court may—
- (a) after having regard to the matters mentioned in subsection (3), make an order—
 - (i) for payment to the survivor out of the deceased's net intestate estate of a capital sum of such amount as may be specified in the order;
 - (ii) for transfer to the survivor of such property (whether heritable or moveable) from that estate as may be so specified;
 - (b) make such interim order as it thinks fit.
- (3) Those matters are—
- (a) the size and nature of the deceased's net intestate estate;
 - (b) any benefit received, or to be received, by the survivor—
 - (i) on, or in consequence of, the deceased's death; and
 - (ii) from somewhere other than the deceased's net intestate estate;
 - (c) the nature and extent of any other rights against, or claims on, the deceased's net intestate estate; and
 - (d) any other matter the court considers appropriate.
- (4) An order or interim order under subsection (2) shall not have the effect of awarding to the survivor an amount which would exceed the amount to which the survivor would have been entitled had the survivor been the spouse or civil partner of the deceased.
- (5) An application under this section may be made to—
- (a) the Court of Session;
 - (b) a sheriff in the sheriffdom in which the deceased was habitually resident at the date of death;
 - (c) if at the date of death it is uncertain in which sheriffdom the deceased was habitually resident, the sheriff at Edinburgh.
- (6) [Subject to section 29A,] any application under this section shall be made before the expiry of the period of 6 months beginning with the day on which the deceased died.
- (7) In making an order under paragraph (a)(i) of subsection (2), the court may specify that the capital sum shall be payable—
- (a) on such date as may be specified;
 - (b) in instalments.
- (8) In making an order under paragraph (a)(ii) of subsection (2), the court may specify that the transfer shall be effective on such date as may be specified.
- (9) If the court makes an order in accordance with subsection (7), it may, on an application by any party having an interest, vary the date or method of payment of the capital sum.
- (10) In this section—
- 'intestate' shall be construed in accordance with section 36(1) of the Succession (Scotland) Act 1964 (c 41);
- 'legal rights' has the meaning given by section 36(1) of the Succession (Scotland) Act 1964 (c 41);
- 'net intestate estate' means so much of the intestate estate as remains after provision for the satisfaction of—
- (a) inheritance tax;
 - (b) other liabilities of the estate having priority over legal rights and the prior rights of a surviving spouse or surviving civil partner; and
 - (c) the legal rights, and the prior rights, of any surviving spouse or surviving civil partner; and
- 'prior rights' has the meaning given by section 36(1) of the Succession (Scotland) Act 1964 (c 41).

[29A Extension of time limits for applications under sections 28 and 29: cross-border mediation

- (1) This section applies to the calculation of—

(a) the one year period for the purposes of section 28(8) in relation to a relevant cross-border dispute; and

(b) the 6 month period for the purposes of section 29(6) in relation to a relevant cross-border dispute.

(2) A period referred to in subsection (1) is extended where it would, apart from this subsection, expire—

(a) in the 8 weeks after the date that a mediation in relation to the dispute ends;

(b) on the date that a mediation in relation to the dispute ends; or

(c) after the date when all of the parties to the dispute agree to participate in a mediation in relation to the dispute but before the date that such mediation ends.

(3) Where subsection (2) applies, the period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(4) For the purposes of this section, mediation in relation to a relevant cross-border dispute ends when any of the following occurs—

(a) all of the parties reach an agreement in resolution of the dispute;

(b) all of the parties agree to end the mediation;

(c) a party withdraws from the mediation, which is the date on which—

(i) a party informs all of the other parties of that party's withdrawal,

(ii) in the case of a mediation involving 2 parties, 14 days expire after a request made by one party to the other party for confirmation of whether the other party has withdrawn, if the other party does not respond in that period, or

(iii) in the case of a mediation involving more than 2 parties, a party informs all of the remaining parties that the party received no response in the 14 days after a request to another party for confirmation of whether the other party had withdrawn; or

(d) a period of 14 days expires after the date on which the mediator's tenure ends (by reason of death, resignation or otherwise), if a replacement mediator has not been appointed.

(5) In this section—

'the Directive' means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

'mediation' and 'mediator' have the meanings given by Article 3 of the Directive; and

'relevant cross-border dispute' means a cross-border dispute within the meaning given by Article 2 of the Directive which is about—

(a) a sum which a court may order to be paid under section 28(2);

(b) a sum which a court may order to be paid under section 29(2); or

(c) property which a court may order to be transferred under section 29(2).]

38 Validity of marriages

(1) Subject to [section 13(1) of, and Schedule 6 to, the Marriage (Same Sex Couples) Act 2013 and to any orders in Council made under that Schedule], the question whether a marriage is formally valid shall be determined by the law of the place where the marriage was celebrated.

(2) The question whether a person who enters into a marriage—

(a) had capacity; or

(b) consented,

to enter into it shall, subject to subsections (3) and (4) and to section 50 of the Family Law Act 1986 (c 55) (non-recognition of divorce or annulment in another jurisdiction no bar to remarriage), be determined by the law of the place where, immediately before the marriage, that person was domiciled.

(3) If a marriage entered into in Scotland is void under a rule of Scots internal law, then, notwithstanding subsection (2), that rule shall prevail over any law under which the marriage would be valid.

(4) The capacity of the person to enter into the marriage shall not be determined under the law of the place where, immediately before the marriage, the person was domiciled in so far as it would be contrary to public policy in Scotland for such capacity to be so determined.

(5) If the law of the place in which a person is domiciled requires a person under a certain age to obtain parental consent before entering into a marriage, that requirement shall not be taken to affect the capacity of a person to enter into a marriage in Scotland unless failure to obtain such consent would render invalid any marriage that the person purported to enter into in any form anywhere in the world.

39 Matrimonial property

(1) Any question in relation to the rights of spouses to each other's immovable property arising by virtue of the marriage shall be determined by the law of the place in which the property is situated.

(2) Subject to subsections (4) and (5), if spouses are domiciled in the same country, any question in relation to the rights of the spouses to each other's moveable property arising by virtue of the marriage shall be determined by the law of that country.

(3) Subject to subsections (4) and (5), if spouses are domiciled in different countries then, for the purposes of any question in relation to the rights of the spouses to each other's moveable property arising by virtue of the marriage, the spouses shall be taken to have the same rights to such property as they had immediately before the marriage.

(4) Any question in relation to—

(a) the use or occupation of a matrimonial home which is moveable; or

(b) the use of the contents of a matrimonial home (whether the home is moveable or immovable),

shall be determined by the law of the country in which the home is situated.

(5) A change of domicile by a spouse (or both spouses) shall not affect a right in moveable property which, immediately before the change, has vested in either spouse.

(6) This section shall not apply—

(a) in relation to the law on aliment, financial provision on divorce, transfer of property on divorce or succession;

(b) to the extent that spouses agree otherwise.

(7) In this section, 'matrimonial home' has the same meaning as in section 22 of the 1981 Act.

40 Aliment

Subject to the Maintenance Orders (Reciprocal Enforcement) Act 1972 (c 18), a court in Scotland shall apply Scots internal law in any action for aliment which comes before it.

41 Effect of parents' marriage in determining status to depend on law of domicile

Any question arising as to the effect on a person's status of—

(a) the person's parents being, or having been, married to each other; or

(b) the person's parents not being, or not having been, married to each other,

shall be determined by the law of the country in which the person is domiciled at the time at which the question arises.

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007
(2007 asp 4)

PART 1
ADOPTION

CHAPTER 3 – STATUS OF ADOPTED CHILDREN

39 Meaning of ‘adoption’ in Chapter 3

- (1) In this Chapter, ‘adoption’ means—
- (a) adoption by an adoption order,
 - (b) adoption by an adoption order as defined in section 46(1) of the 2002 Act,
 - (c) adoption by an order made, or having effect as if made, under Article 12 of the Northern Ireland Order,
 - (d) adoption by an order made in the Isle of Man or any of the Channel Islands,
 - (e) a Convention adoption,
 - (f) an overseas adoption, or
 - (g) an adoption recognised by the law of Scotland and effected under the law of any other country;
- and related expressions are to be interpreted accordingly.

(2) References in this Chapter to adoption do not include an adoption effected before the day on which this Chapter comes into force.

(3) Any reference in an enactment to an adopted person within the meaning of this Chapter includes a reference to an adopted child within the meaning of Part IV of the Adoption (Scotland) Act 1978 (c 28).

40 Status conferred by adoption

(1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.

(2) If an adopted person is adopted—

- (a) by a relevant couple, or
- (b) by virtue of section 30(3), by a member of a relevant couple,

the adopted person is to be treated as the child of the couple concerned.

(3) An adopted person adopted by virtue of section 30(3) by a member of a relevant couple is to be treated in law as not being the child of any person other than the adopter and the other member of the couple.

(4) Otherwise, an adopted person is to be treated in law as not being the child of any person other than the adopters or adopter.

(5) Subsections (3) and (4) do not affect any reference in this Act to a person’s natural parent or to any other natural relationship.

(6) Subsection (7) applies where, in the case of a person adopted under a Convention adoption, the Court of Session is satisfied, on an application under this section—

- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption,
- (b) that—
 - (i) the consents mentioned in Article 4(c) and (d) of the Convention have not been given for a full adoption, or
 - (ii) the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention), and
- (c) that it would be more favourable to the person for a direction to be given under that subsection.

(7) The court may direct that subsection (4)—

- (a) is not to apply, or
- (b) is not to apply to such extent as may be specified in the direction.

(8) In subsection (6), ‘full adoption’ means an adoption by virtue of which the

person falls to be treated in law as if the person were not the child of any person other than the adopters or adopter.

(9) This section has effect from the date of the adoption.

(10) Subject to the provisions of this Chapter, this section—

(a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption and so applies subject to any contrary indication, and

(b) has effect as respects things done, or events occurring, on or after the adoption.

CHAPTER 6 – ADOPTIONS WITH A FOREIGN ELEMENT

58 Restriction on bringing children into the United Kingdom

(1) This section applies where a person who is habitually resident in the British Islands (the ‘British resident’)—

(a) brings, or causes another to bring, a child who is habitually resident outwith the British Islands into the United Kingdom for the purpose of adoption by the British resident, or

(b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of 12 months ending with that time.

(2) In subsection (1), the references to adoption, or a child adopted, by the British resident include a reference to adoption, or a child adopted, by the British resident and another person.

(3) This section does not apply if the child is intended to be adopted under a Convention adoption order.

(4) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outwith the British Islands, whether or not the adoption is—

(a) an adoption within the meaning of Chapter 3, or

(b) a full adoption (as defined in section 40(8)).

(5) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—

(a) to apply to an adoption agency in the prescribed manner for an assessment of the person’s suitability to adopt the child, and

(b) to give the agency any information it may require for the purpose of the assessment.

(6) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.

(7) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may provide for any provision of Chapter 2 to apply with modifications or not to apply.

(8) Regulations may provide for this section not to apply if—

(a) the adopters or, as the case may be, prospective adopters of the child in question are—

(i) natural parents,

(ii) natural relatives, or

(iii) guardians,

of the child (or one of them is), or

(b) the British resident in question is a step-parent of the child, and any prescribed conditions are met.

(9) On the occasion of the first exercise of the power to make regulations under subsection (8)—

(a) the regulations must not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and

(b) accordingly section 117(4) does not apply to the statutory instrument containing the regulations.

(10) In this section, 'prescribed' means prescribed by regulations and 'regulations' means regulations made by the Scottish Ministers.

59 Preliminary order where child to be adopted abroad

(1) The appropriate court may, on an application by persons ('the prospective adopters') who the court is satisfied intend to adopt a child under the law of a country or territory outwith the British Islands, make an order vesting parental responsibilities and parental rights in relation to the child in the prospective adopters.

(2) If the court is satisfied that the prospective adopters would meet the requirements as to domicile, or habitual residence, in Scotland which they would require to meet if an adoption order were to be made on their application, the court may not make an order under this section.

(3) An order under this section may not be made unless any requirements prescribed by regulations by the Scottish Ministers are satisfied.

(4) An application for an order under this section may not be made unless at all times during the period of 10 weeks immediately preceding the application the child's home was with the prospective adopters.

(5) Section 35 has effect in relation to an order under this section as it has effect in relation to adoption orders.

(6) The Scottish Ministers may by regulations provide for any provision of this Act which relates to adoption orders to apply, with or without modifications, to orders under this section.

60 Restriction on removal of children for adoption outwith Great Britain

(1) A person who takes or sends a protected child out of Great Britain to any place outwith the British Islands with a view to the adoption of the child by any person commits an offence.

(2) A person who makes or takes part in any arrangements for transferring the care of a protected child to another person, knowing that the other person intends to take or send the child out of Great Britain in circumstances which would constitute an offence under subsection (1), commits an offence.

(3) No offence is committed under subsection (1) if the child is taken or sent out of Great Britain under the authority of an order under—

(a) section 59,

(b) section 84 of the 2002 Act, or

(c) Article 57 of the Northern Ireland Order.

(4) A person is deemed to take part in arrangements for transferring the care of a child to another person for the purpose mentioned in subsection (2) if the person—

(a) facilitates the placing of the child in the care of the other person,

(b) initiates or takes part in negotiations the purpose or effect of which is—

(i) the making of such arrangements, or

(ii) the conclusion of an agreement to transfer the care of the child,

for the purpose mentioned in that subsection, or

(c) causes any person to initiate or take part in any such negotiations.

(5) The Scottish Ministers may by regulations provide for subsections (1) to (3) to apply with modifications, or not to apply, if—

(a) the prospective adopters are—

(i) parents,

(ii) relatives, or

(iii) guardians,

of the child (or one of them is), or

(b) the prospective adopter is a step-parent of the child, and any conditions prescribed by the regulations are met.

(6) On the occasion of the first exercise of the power to make regulations under subsection (5)—

(a) the regulations must not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and

(b) accordingly section 117(4) does not apply to the statutory instrument containing the regulations.

(7) In any proceedings under this section—

(a) a report by a British consular officer or a deposition made before, and authenticated under the signature of, such an officer is (if proved that the officer or deponent cannot be found in the United Kingdom) sufficient evidence of the matters stated in the report or deposition, and

(b) it is not necessary to prove the signature or official character of the person who bears to have signed the report or deposition.

(8) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(9) In subsections (1) and (2), ‘protected child’ means a child who is—

(a) habitually resident in the United Kingdom, or

(b) a Commonwealth citizen.

61 Regulations under section 58: offences

(1) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where section 58 applies, the person commits an offence—

(a) if the person has not complied with any requirement imposed by virtue of subsection (5) of that section, or

(b) if the person has not met any condition which the person is required to meet by virtue of subsection (6) of that section, before that time, or before any later time which may be prescribed by regulations made by the Scottish Ministers.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,

(b) on conviction on indictment to imprisonment for a term not exceeding 12 months, or a fine or both.

62 Declaration of special restrictions on adoptions from abroad

(1) This section applies if the Scottish Ministers have reason to believe that, because of practices taking place in a country or territory outwith the British Islands (the ‘relevant country’) in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).

(2) Those cases are—

(a) that a British resident wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident and, in connection with the proposed adoption, there have been, or would have to be, proceedings in the relevant country or dealings with authorities or agencies there, or

(b) that a British resident wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected, within the period of 12 months ending with the date of the bringing in, under the law of the relevant country.

(3) The Scottish Ministers may by order declare, in relation to any relevant

country, that special restrictions are to apply for the time being in relation to the bringing in of children in the cases mentioned in subsection (2).

(4) The Scottish Ministers must, as respects each relevant country in relation to which such a declaration has effect for the time being (a 'restricted country'), publish reasons for making the declaration in relation to the country.

(5) The Scottish Ministers must publish a list of restricted countries ('the restricted list') and keep the list up to date.

(6) The reasons and the restricted list are to be published in whatever way the Scottish Ministers think appropriate for bringing them to the attention of adoption agencies and members of the public.

(7) In this section, 'British resident' means a person habitually resident in the British Islands.

(8) Any reference in this section to adoption by a British resident includes adoption by a British resident and another person.

64 The special restrictions

(1) The special restrictions mentioned in subsection (3) of section 62 are that the Scottish Ministers are not to take any step which they might otherwise have taken in connection with furthering the bringing of a child into the United Kingdom in the cases mentioned in subsection (2) of that section (whether or not that step is provided for by virtue of any enactment).

(2) Nothing in subsection (1) prevents the Scottish Ministers from taking those steps if, in any particular case, the prospective adopters or, as the case may be, the adopters satisfy the Scottish Ministers that they should take those steps despite the special restrictions.

(3) The Scottish Ministers may make regulations providing for—

(a) the procedure to be followed by them in determining whether or not they are satisfied as mentioned in subsection (2),

(b) matters which they are to take into account when making such a determination (whether or not they also take other matters into account).

65 Imposition of extra conditions in certain cases

(1) The Scottish Ministers may make regulations providing—

(a) for them to specify in the restricted list, in relation to any restricted country, a step which is not otherwise provided for by virtue of any enactment but which, by virtue of the arrangements between the United Kingdom and that country, the Scottish Ministers normally take in connection with the bringing in of a child where that country is concerned, and

(b) that, if such a step has been so specified in relation to a restricted country, one or more conditions specified in the regulations are to be met in respect of a child brought into the United Kingdom in either of the cases mentioned in section 62(2) (reading the reference there to the 'relevant country' as being to the restricted country in question).

(2) Those conditions are in addition to any provided for by virtue of—

(a) section 58, or

(b) any other enactment.

(3) A person who brings, or causes another to bring, a child into the United Kingdom commits an offence if the person has not met any condition which the person is required to meet by virtue of subsection (1)(b).

(4) Subsection (3) does not apply if the step specified in the restricted list in relation to any country had already been taken before the publication of the restricted list.

(5) A person who commits an offence under subsection (3) is liable—

(a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,

(b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine or both.

(6) In this section, ‘restricted country’ and ‘restricted list’ have the same meanings as in section 62.

67 Meaning of ‘overseas adoption’

(1) In this Act, ‘overseas adoption’—

(a) means an adoption of a description specified in regulations made by the Scottish Ministers (being a description of adoptions effected under the law of any country or territory outwith the British Islands), but

(b) does not include a Convention adoption.

(2) The Scottish Ministers may by regulations prescribe the requirements that ought to be met by an adoption of any description effected after the coming into force of the regulations for it to be an overseas adoption for the purposes of this Act.

(3) At any time when regulations under subsection (2) are in force, the Scottish Ministers must exercise their power under subsection (1) so as to secure that adoptions of any description effected after the coming into force of the regulations are not overseas adoptions for the purposes of this Act if they consider that such adoptions are not likely, within a reasonable time, to meet the requirements prescribed under subsection (2).

(4) Regulations under subsection (1) may contain provision as to the manner in which evidence of any overseas adoption may be given.

(5) In this section, ‘adoption’ means the adoption of a child or of a person who was a child at the time the adoption was applied for.

68 Annulment and recognition

(1) The Court of Session may, on an application under this subsection, by order annul a Convention adoption or a Convention adoption order on the ground that the adoption or, as the case may be, order is contrary to public policy.

(2) The Court of Session may, on an application under this subsection—

(a) order that an overseas adoption or a determination is to cease to be valid in Great Britain on the ground that the adoption or, as the case may be, determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case,

(b) decide the extent, if any, to which a determination has been affected by a subsequent determination.

(3) The Court of Session may, in any proceedings in that court, decide that an overseas adoption or a determination is, for the purposes of those proceedings, to be treated as invalid in Great Britain on either of the grounds mentioned in subsection (2)(a).

(4) An order or decision of the High Court on an application under section 89 (2) of the 2002 Act is to be recognised and to have effect as if it were an order or decision of the Court of Session on an application under subsection (2).

(5) Except as provided by this section, the validity of a Convention adoption, a Convention adoption order, an overseas adoption or a determination is not to be questioned in proceedings in any court in Scotland.

(6) In this section ‘determination’ means such a determination as is mentioned in section 70.

69 Section 68: supplementary provision

(1) Any application for—

(a) an order under section 68, or

(b) a decision under subsection (2)(b) of that section,

is to be made in the manner prescribed in regulations made by the Scottish Ministers and within such period as may be so prescribed.

(2) No application is to be made under section 68(1) in respect of an adoption unless immediately before the application is made—

(a) the person adopted was habitually resident in Scotland, or

(b) the persons on whose application the adoption order was made were habitually resident there.

(3) In deciding in pursuance of section 68 whether such an authority as is mentioned in section 70 was competent to hear a particular case, a court is to be bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to hear the case.

70 Effect of determinations and orders made outwith Scotland

(1) Subsection (2) applies where—

(a) an authority of a Convention country (other than the United Kingdom) having power under the law of that country—

- (i) to authorise, or review the authorisation of, a Convention adoption, or
- (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order, or

(b) an authority of a relevant territory having power under the law of that territory—

- (i) to authorise, or review the authorisation of, a Convention adoption or an adoption effected in that territory, or
- (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order,

makes a determination ('the relevant determination') in the exercise of that power.

(2) Subject to section 68 and any subsequent determination having effect under this subsection, the relevant determination has effect in Scotland for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination as the case may be.

(3) In subsection (1), 'relevant territory' means—

- (a) any of the Channel Islands,
- (b) the Isle of Man, or
- (c) any British overseas territory (within the meaning of the British Nationality Act 1981 (c 61)).

(4) Section 35 applies in relation to an order under Article 17 (freeing child for adoption with parental agreement) or 18 (freeing child for adoption without parental agreement) of the Northern Ireland Order as if it were an adoption order.

(5) Sections 35(2) and (3) and 43 apply in relation to a child who is the subject of an order which—

- (a) is similar to an order under section 59, and
- (b) is made (whether before or after this Act has effect) in a part of the British Islands,

as those sections apply in relation to a child who is the subject of an adoption order.

119 Interpretation

(1) In this Act, unless the context otherwise requires—

...

'the Convention' means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993,

'Convention adoption' means an adoption effected under the law of a Convention country outwith the British Islands and certified in pursuance of Article 23(1) of the Convention,

'Convention adoption order' means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c 18), is made as a Convention adoption order,

'Convention country' means any country or territory in which the Convention is in force,

(2) In this Act, unless the context otherwise requires, references to adoption are to the adoption of children, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outwith the British Islands.

HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008
(2008 c 22)

54 Parental orders [: two applicants]

(1) On an application made by two people ('the applicants'), the court may make an order providing for a child to be treated in law as the child of the applicants if—

- (a) the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,
- (b) the gametes of at least one of the applicants were used to bring about the creation of the embryo, and
- (c) the conditions in subsections (2) to [(8A)] are satisfied.

(2) The applicants must be—

- (a) husband and wife,
- (b) civil partners of each other, or
- (c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.

(3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.

(4) At the time of the application and the making of the order—

- (a) the child's home must be with the applicants, and
- (b) either or both of the applicants must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.

(5) At the time of the making of the order both the applicants must have attained the age of 18.

(6) The court must be satisfied that both—

- (a) the woman who carried the child, and
- (b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.

(8) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of—

- (a) the making of the order,
- (b) any agreement required by subsection (6),
- (c) the handing over of the child to the applicants, or
- (d) the making of arrangements with a view to the making of the order,

unless authorised by the court.

[(8A An order relating to the child must not previously have been made under this section or section 54A, unless the order has been quashed or an appeal against the order has been allowed.]

(9) For the purposes of an application under this section—

- (a) in relation to England and Wales [—
 - (i) 'the court' means the High Court or the family court, and
 - (ii) proceedings on the application are to be 'family proceedings' for the purposes of the Children Act 1989,]

(b) in relation to Scotland, 'the court' means the Court of Session or the sheriff court of the sheriffdom within which the child is, and

(c) in relation to Northern Ireland, 'the court' means the High Court or any county court [...].

(10) Subsection (1)(a) applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(11) An application which—

(a) relates to a child born before the coming into force of this section, and

(b) is made by two persons who, throughout the period applicable under subsection (2) of section 30 of the 1990 Act, were not eligible to apply for an order under that section in relation to the child as husband and wife, may be made within the period of six months beginning with the day on which this section comes into force.

FORCED MARRIAGE ETC (PROTECTION AND JURISDICTION) (SCOTLAND) ACT 2011 (2011 asp 15)

PART 1 FORCED MARRIAGE PROTECTION ORDERS

Forced marriage protection orders

1 Forced marriage protection orders

(1) The court may make an order for the purposes of protecting a person (a 'protected person')—

(a) from being forced into a marriage or from any attempt to force the person into a marriage, or

(b) who has been forced into a marriage.

(2) In deciding whether to make such an order and, if so, what order to make, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the protected person.

(3) In ascertaining the protected person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate on the basis of the person's age and understanding.

(4) For the purposes of this Part, a person ('A') is forced into a marriage if another person ('B') forces A to enter into a marriage (whether with B or another person) without A's free and full consent.

(5) For the purposes of subsection (4), it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

(6) In this Part—
'force' includes—

(a) coerce by physical, verbal or psychological means, threatening conduct, harassment or other means,

(b) knowingly take advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage, and related expressions are to be read accordingly,

'forced marriage protection order' means an order under subsection (1).

2 Contents of orders

(1) A forced marriage protection order may contain such—

(a) prohibitions, restrictions or requirements, and

(b) other terms,

as the court considers appropriate for the purposes of the order.

- (2) The terms of such an order may, in particular, relate to—
- (a) conduct outwith (as well as, or instead of, conduct within) Scotland,
 - (b) persons who force or attempt to force, or may force or attempt to force, a protected person to enter into a marriage,
 - (c) persons who are, or may become, involved in other respects.
- (3) A forced marriage protection order may, among other things, require a person—
- (a) to take the protected person to a place of safety designated in the order,
 - (b) to bring the protected person to a court at such time and place as the court making the order may specify,
 - (c) to refrain from violent, threatening or intimidating conduct (whether against the protected person or any other person),
 - (d) who is a person such as is mentioned in subsection (2)(b) or (c), to appear in court,
 - (e) to disclose, if known, the whereabouts of such a person,
 - (f) to refrain from taking the protected person from, or to, such place as the court may specify,
 - (g) to facilitate or otherwise enable the protected person or another person to return or go to such place (whether in Scotland or another part of the United Kingdom) as the court may specify within such period as may be so specified,
 - (h) to submit to the court such documents (including passports, birth certificates or other documents identifying the person and travel documents) as the court may specify,
 - (i) to provide the court with such other information as it may specify.
- (4) For the purposes of subsection (2)(c), examples of involvement in other respects are—
- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage,
 - (b) conspiring to force, or to attempt to force, a person to enter into a marriage.

3 Applications for orders

- (1) The court may make a forced marriage protection order on an application being made to it by—
- (a) the protected person, or
 - (b) a relevant third party.
- (2) An application may be made by any other person only with the leave of the court.
- (3) In deciding whether to grant such leave, the court must have regard to all the circumstances including—
- (a) the applicant's connection with the protected person,
 - (b) the applicant's knowledge of the circumstances of the protected person, and
 - (c) the wishes and feelings of the protected person so far as they are reasonably ascertainable.
- (4) But the court need only have regard to those wishes and feelings so far as it considers it appropriate, on the basis of the protected person's age and understanding, to do so.
- (5) An application made to the sheriff under this section is to be made by summary application.
- (6) An application made to the sheriff under this section is to be made—
- (a) to the sheriff in whose sheriffdom the protected person is ordinarily resident, or
 - (b) where the protected person is not ordinarily resident in Scotland, to the sheriff of the sheriffdom of Lothian and Borders at Edinburgh.
- (7) In this section, 'a relevant third party' means—
- (a) a local authority,

- (b) the Lord Advocate,
- (c) a person specified, or falling within a description of persons specified, by order made by the Scottish Ministers.

4 Power to make orders without application, etc

- (1) The court may make a forced marriage protection order without an application being made to it where—
- (a) civil proceedings are before the court,
 - (b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the civil proceedings), and
 - (c) a person who would be a party to any proceedings for the forced marriage protection order (other than as the protected person) is a party to the civil proceedings.
- (2) Subsection (3) applies where—
- (a) criminal proceedings are before the sheriff [, the Sheriff Appeal Court] or the High Court, and
 - (b) the sheriff [, the Sheriff Appeal Court] or the High Court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the criminal proceedings).
- (3) The sheriff [, the Sheriff Appeal Court] or, as the case may be, the High Court may refer the matter to the Lord Advocate who may—
- (a) apply under section 3 for a forced marriage protection order,
 - (b) take such other steps as the Lord Advocate considers appropriate.

Interim orders

5 Interim orders

- (1) The court may, in a case where it considers that it is equitable to do so, make a forced marriage protection order in the absence of a person who is, or would be, a party to proceedings for the order (and may do so whether or not the person has been given such notice of the application for the order as would otherwise be required by rules of court).
- (2) An order made by virtue of subsection (1) is an ‘interim forced marriage protection order’.
- (3) In deciding whether to make an interim order by virtue of subsection (1), the court must have regard to all the circumstances including any risk of significant harm to the protected person or to another person if the order is not made immediately.
- (4) In this Part (unless the context otherwise requires), references to forced marriage protection orders include references to interim forced marriage protection orders.

Duration, variation, recall and extension

6 Duration of orders

A forced marriage protection order has effect—

- (a) where the order specifies a period for which it is to have effect, until the expiry of that period (unless the order is recalled under section 7 or extended under section 8),
- (b) where no such period is specified, until the order is recalled under section 7.

7 Variation and recall of orders

- (1) The court may vary or recall a forced marriage protection order on an application by—

- (a) any person who was or, in the case of an order made by virtue of section 4(1) or 5(1), would have been a party to the proceedings for the order,
- (b) the protected person (if not such a person),
- (c) any other person affected by the order, or
- (d) with the leave of the court only, any person not falling within paragraphs (a) to (c).

(2) In deciding whether to grant leave under subsection (1)(d), the court must have regard to all the circumstances including—

- (a) the applicant's connection with the protected person,
- (b) the applicant's knowledge of the circumstances of the protected person, and
- (c) the wishes and feelings of the protected person so far as they are reasonably ascertainable.

(3) But the court need only have regard to those wishes and feelings so far as it considers it appropriate, on the basis of the protected person's age and understanding, to do so.

(4) In addition, the court may vary or recall a forced marriage protection order made by virtue of section 4(1) even though no application under subsection (1) of this section has been made to the court.

(5) Section 5 applies to the variation of a forced marriage protection order as it applies to the making of an interim forced marriage protection order; and accordingly the references in that section to the making of such an interim order are to be read for the purposes of this subsection as references to varying a forced marriage protection order.

(6) In this Part, where a forced marriage protection order specifies a period for which it is to have effect, references to varying an order do not include extending any such period.

8 Extension of orders

(1) This section applies where a forced marriage protection order specifies a period for which it is to have effect.

(2) Before the expiry of the period, a person mentioned in subsection (3) may apply to the court for an extension of the order.

(3) The persons are—

- (a) any person who was or, in the case of an order made by virtue of section 4(1) or 5(1), would have been a party to the proceedings for the order,
- (b) the protected person (if not such a person),
- (c) any other person affected by the order, or
- (d) with the leave of the court only, any person not falling within paragraphs (a) to (c).

(4) In deciding whether to grant leave under subsection (3)(d), the court must have regard to all the circumstances including—

- (a) the applicant's connection with the protected person,
- (b) the applicant's knowledge of the circumstances of the protected person, and
- (c) the wishes and feelings of the protected person so far as they are reasonably ascertainable.

(5) But the court need only have regard to those wishes and feelings so far as it considers it appropriate, on the basis of the protected person's age and understanding, to do so.

(6) In addition, where the order was made by virtue of section 4(1), the court may before the expiry of the period extend the order even though no application has been made to the court.

(7) An order may be extended on more than one occasion.

(8) Section 5 applies to the extension of a forced marriage protection order as it applies to the making of an interim forced marriage protection order; and

accordingly the references in that section to the making of such an interim order are to be read for the purposes of this subsection as references to extending such an order.

Offence

9 Offence of breaching order

(1) Any person who, knowingly and without reasonable excuse, breaches a forced marriage protection order commits an offence.

[...]

(4) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

(5) Where a person is convicted of an offence under subsection (1) in respect of any conduct, that conduct is not punishable as a contempt of court.

Power to apply Part to civil partnerships

10 Power to apply Part to civil partnerships

(1) The Scottish Ministers may by order make provision applying this Part (or particular provisions of it) to civil partnerships as it applies (or as the particular provisions of it apply) to marriages.

(2) An order under subsection (1) may, for the purposes of the application mentioned in that subsection, make such modifications of enactments (including of this Act) as the Scottish Ministers consider necessary.

Supplementary

11 Guidance

(1) The Scottish Ministers must, no later than the day on which section 1 comes into force, give guidance to such persons or descriptions of persons as Ministers consider appropriate about the effect of this Part or any provision of it.

(2) The Scottish Ministers may give guidance to such persons or descriptions of persons as Ministers consider appropriate about matters (other than that mentioned in subsection (1)) relating to forced marriages.

(3) A person exercising public functions to whom guidance is given under this section must have regard to it in the exercise of those functions.

(4) The Scottish Ministers may not give guidance under this section to any court or tribunal.

12 Other protection or assistance against forced marriage

(1) This Part does not affect any other protection or assistance available to a person who—

(a) is being, or may be, forced into a marriage,

(b) is being, or may be, subjected to an attempt to force the person into a marriage, or

(c) has been forced into a marriage.

(2) In particular, it does not affect—

(a) the equitable jurisdiction of the High Court or the Court of Session,

(b) any criminal liability,

(c) any civil remedies under the Protection from Harassment Act 1997 (c 40),

(d) any right to—

(i) an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c 59) relating to occupancy rights,

(ii) an exclusion order under that Act,

- (e) any protection or assistance under the Children (Scotland) Act 1995 (c 36) or the Children's Hearings (Scotland) Act 2011 (asp 1),
- (f) any claim in delict, or
- (g) the law of marriage.

14 Interpretation of Part

In this Part (except where the context otherwise requires)—

- 'court' means the Court of Session or the sheriff,
- 'force' and related expressions have the meanings given by section 1(6),
- 'forced marriage protection order' has the meaning given by section 1(6),
- 'interim forced marriage protection order' has the meaning given by section 5(2),
- 'marriage' means any religious or civil ceremony of marriage (wherever carried out and whether or not legally binding under the law of Scotland or any other place),
- 'protected person' has the meaning given by section 1(1).

PART 3 GENERAL

16 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes, or in consequence, of any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

17 Subordinate legislation

(1) Any power conferred by this Act on the Scottish Ministers to make orders is exercisable by statutory instrument.

(2) Subject to subsection (3), a statutory instrument containing an order under this Act (other than one under section 19(2)) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) No order under—

(a) section 10(1),

(b) section 16(1) containing provisions which add to, replace or omit any part of the text of any Act,

may be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

18 Crown application

(1) No contravention by the Crown of—

(a) section 9(1), or

(b) any provision made by virtue of section 10,

makes the Crown criminally liable.

(2) But the Court of Session may, on the application of any public body or office holder having responsibility for enforcing section 9(1) or any provision made by virtue of section 10, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), section 9(1) and any provision made by virtue of section 10 apply to persons in the public service of the Crown as they apply to other persons.

(4) Nothing in this Act affects Her Majesty in Her private capacity.

19 Short title and commencement

(1) The short title of this Act is the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011.

(2) This Act (other than this section) comes into force on such day as the Scottish Ministers may by order appoint.

DEFAMATION ACT 2013
(2013 c 26)

9 Action against a person not domiciled in the UK or a Member State etc

(1) This section applies to an action for defamation against a person who is not domiciled—

- (a) in the United Kingdom;
- (b) in another Member State; or
- (c) in a state which is for the time being a contracting party to the Lugano Convention.

(2) A court does not have jurisdiction to hear and determine an action to which this section applies unless the court is satisfied that, of all the places in which the statement complained of has been published, England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.

(3) The references in subsection (2) to the statement complained of include references to any statement which conveys the same, or substantially the same, imputation as the statement complained of.

(4) For the purposes of this section—

(a) a person is domiciled in the United Kingdom or in another Member State if the person is domiciled there for the purposes of the Brussels Regulation;

(b) a person is domiciled in a state which is a contracting party to the Lugano Convention if the person is domiciled in the state for the purposes of that Convention.

(5) In this section—

‘the Brussels Regulation’ means [Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), as amended from time to time and as applied by virtue of the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;]

‘the Lugano Convention’ means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark signed on behalf of the European Community on 30th October 2007.

Section 9 as amended by SI 2019/479, reg 69:

9 Action against a person not domiciled in the UK [...]

(1) This section applies to an action for defamation against a person who is not domiciled—

- (a) in the United Kingdom.

[...]

(2) A court does not have jurisdiction to hear and determine an action to which this section applies unless the court is satisfied that, of all the places in which the statement complained of has been published, England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.

(3) The references in subsection (2) to the statement complained of include references to any statement which conveys the same, or substantially the same, imputation as the statement complained of.

(4) [Sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982 apply for the purpose of determining whether an individual corporation or association is regarded as ‘domiciled in the United Kingdom’ for the purposes of this section.]
[...]

MARRIAGE (SAME SEX COUPLES) ACT 2013

(2013 c 30)

PART 1

MARRIAGE OF SAME SEX COUPLES IN ENGLAND AND WALES

1 Extension of marriage to same sex couples

- (1) Marriage of same sex couples is lawful.
- (2) The marriage of a same sex couple may only be solemnized in accordance with—
 - (a) Part 3 of the Marriage Act 1949,
 - (b) Part 5 of the Marriage Act 1949,
 - (c) the Marriage (Registrar General’s Licence) Act 1970, or
 - (d) an Order in Council made under Part 1 or 3 of Schedule 6.
- (3) No Canon of the Church of England is contrary to section 3 of the Submission of the Clergy Act 1533 (which provides that no Canons shall be contrary to the Royal Prerogative or the customs, laws or statutes of this realm) by virtue of its making provision about marriage being the union of one man with one woman.
- (4) Any duty of a member of the clergy to solemnize marriages (and any corresponding right of persons to have their marriages solemnized by members of the clergy) is not extended by this Act to marriages of same sex couples.
- (5) A ‘member of the clergy’ is—
 - (a) a clerk in Holy Orders of the Church of England, or
 - (b) a clerk in Holy Orders of the Church in Wales.

9 Conversion of civil partnership into marriage

- (1) The parties to an England and Wales civil partnership may convert their civil partnership into a marriage under a procedure established by regulations made by the Secretary of State.
- (2) The parties to a civil partnership within subsection (3) may convert their civil partnership into a marriage under a procedure established by regulations made by the Secretary of State.
[(2A) Subsections (1) and (2) apply only where both parties to the civil partnership are of the same sex.]
- (3) A civil partnership is within this subsection if—
 - (a) it was formed outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 (registration at British consulates etc or by armed forces personnel), and
 - (b) the part of the United Kingdom that was relevant for the purposes of section 210(2)(b) or (as the case may be) section 211(2)(b) of that Act was England and Wales.
- (4) Regulations under this section may in particular make—
 - (a) provision about the making by the parties to a civil partnership of an application to convert their civil partnership into a marriage;
 - (b) provision about the information to be provided in support of an application to convert;
 - (c) provision about the making of declarations in support of an application to convert;
 - (d) provision for persons who have made an application to convert to appear before any person or attend at any place;
 - (e) provision conferring functions in connection with applications to convert

on relevant officials, relevant armed forces personnel, the Secretary of State, or any other persons;

(f) provision for fees, of such amounts as are specified in or determined in accordance with the regulations, to be payable in respect of—

(i) the making of an application to convert;

(ii) the exercise of any function conferred by virtue of paragraph (e).

(5) Functions conferred by virtue of paragraph (e) of subsection (4) may include functions relating to—

(a) the recording of information on the conversion of civil partnerships;

(b) the issuing of certified copies of any information recorded;

[(ba) the carrying out, on request, of searches of any information recorded and the provision, on request, of records of any information recorded (otherwise than in the form of certified copies);]

(c) the conducting of services or ceremonies (other than religious services or ceremonies) following the conversion of a civil partnership.

[(5A) Subsection (5B) applies where regulations under this section provide for a fee to be payable to a superintendent registrar or registrar.

(5B) The regulations may provide for such part of the fee as may be specified in or determined in accordance with the regulations to be payable by the superintendent registrar or registrar to the Registrar General in such circumstances as may be set out in the regulations.

(5C) The regulations may provide for the reduction, waiver or refund of part or all of a fee whether by conferring a discretion or otherwise.]

(6) Where a civil partnership is converted into a marriage under this section—

(a) the civil partnership ends on the conversion, and

(b) the resulting marriage is to be treated as having subsisted since the date the civil partnership was formed.

(7) In this section—

‘England and Wales civil partnership’ means a civil partnership which is formed by two people registering as civil partners of each other in England or Wales (see Part 2 of the Civil Partnership Act 2004);

‘relevant armed forces personnel’ means—

(a) a member of Her Majesty’s forces;

(b) a civilian subject to service discipline (within the meaning of the Armed Forces Act 2006);

and for this purpose ‘Her Majesty’s forces’ has the same meaning as in the Armed Forces Act 2006;

‘relevant official’ means—

(a) the Registrar General;

(b) a superintendent registrar;

(c) a registrar;

(d) a consular officer in the service of Her Majesty’s government in the United Kingdom;

(e) a person authorised by the Secretary of State in respect of the solemnisation of marriages or formation of civil partnerships in a country or territory in which Her Majesty’s government in the United Kingdom has for the time being no consular representative.

10 Extra-territorial matters

(1) A marriage under—

(a) the law of any part of the United Kingdom (other than England and Wales), or

(b) the law of any country or territory outside the United Kingdom, is not prevented from being recognised under the law of England and Wales only because it is the marriage of a same sex couple.

(2) For the purposes of this section it is irrelevant whether the law of a

particular part of the United Kingdom, or a particular country or territory outside the United Kingdom—

- (a) already provides for marriage of same sex couples at the time when this section comes into force, or
- (b) provides for marriage of same sex couples from a later time.
- (3) Schedule 2 (extra-territorial matters) has effect.

11 Effect of extension of marriage

(1) In the law of England and Wales, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples.

(2) The law of England and Wales (including all England and Wales legislation whenever passed or made) has effect in accordance with subsection (1).

(3) Schedule 3 (interpretation of legislation) has effect.

(4) Schedule 4 (effect of extension of marriage: further provision) has effect.

(5) For provision about limitations on the effects of subsections (1) and (2) and Schedule 3, see Part 7 of Schedule 4.

(6) Subsections (1) and (2) and Schedule 3 do not have any effect in relation to—

(a) Measures and Canons of the Church of England (whenever passed or made),

(b) subordinate legislation (whenever made) made under a Measure or Canon of the Church of England, or

(c) other ecclesiastical law (whether or not contained in England and Wales legislation, and, if contained in England and Wales legislation, whenever passed or made).

(7) In Schedules 3 and 4—

‘existing England and Wales legislation’ means—

(a) in the case of England and Wales legislation that is primary legislation, legislation passed before the end of the Session in which this Act is passed (excluding this Act), or

(b) in the case of England and Wales legislation that is subordinate legislation, legislation made on or before the day on which this Act is passed (excluding legislation made under this Act);

‘new England and Wales legislation’ means—

(a) in the case of England and Wales legislation that is primary legislation, legislation passed after the end of the Session in which this Act is passed, or

(b) in the case of England and Wales legislation that is subordinate legislation, legislation made after the day on which this Act is passed.

PART 2

OTHER PROVISIONS RELATING TO MARRIAGE AND CIVIL PARTNERSHIP

13 Marriage overseas

- (1) Schedule 6 (marriage overseas) has effect.
- (2) The Foreign Marriage Act 1892 is repealed.

15 Review of civil partnership

(1) The Secretary of State must arrange—

(a) for the operation and future of the Civil Partnership Act 2004 in England and Wales to be reviewed, and

(b) for a report on the outcome of the review to be produced and published.

(2) Subsection (1) does not prevent the review from also dealing with other matters relating to civil partnership.

(3) The arrangements made by the Secretary of State must provide for the review to begin as soon as practicable and include a full public consultation.

20 Extent

- (1) This Act extends to England and Wales.

- (2) These provisions of this Act also extend to Scotland—
- (a) in Part 1, section 10(3) and Schedule 2;
 - (b) Part 2, except for sections 14 and 15;
 - (c) Part 3.
- (3) These provisions of this Act also extend to Northern Ireland—
- (a) in Part 1, section 10(3) and Schedule 2;
 - (b) Part 2, except for sections 14 to 16 and paragraphs 4, 5, 10 and 11 of Schedule 6;
 - (c) Part 3.
- (4) Subsections (1) to (3) do not apply to an amendment or repeal or revocation made by this Act.
- (5) An amendment or repeal or revocation made by this Act has the same extent as the provision amended or repealed or revoked.
- (6) Subsection (5) is subject to subsections (7) to (9).
- (7) Any amendment of the following Acts extends to England and Wales only—
- (a) the Social Security Contributions and Benefits Act 1992;
 - (b) the Pension Schemes Act 1993;
 - (c) the Human Fertilisation and Embryology Act 2008.
- (8) The repeal of the Foreign Marriage Act 1892 made by section 13(2) does not extend to Northern Ireland.
- (9) Any amendment made by Part 2 of Schedule 5 does not extend to Northern Ireland.

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 (2014 c 12)

121 Offence of forced marriage: England and Wales

- (1) A person commits an offence under the law of England and Wales if he or she—
- (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
 - (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.
- (2) In relation to a victim who lacks capacity to consent to marriage, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form of coercion).
- (3) A person commits an offence under the law of England and Wales if he or she—
- (a) practises any form of deception with the intention of causing another person to leave the United Kingdom, and
 - (b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in England or Wales.
- (4) ‘Marriage’ means any religious or civil ceremony of marriage (whether or not legally binding).
- (5) ‘Lacks capacity’ means lacks capacity within the meaning of the Mental Capacity Act 2005.
- (6) It is irrelevant whether the conduct mentioned in paragraph (a) of subsection (1) is directed at the victim of the offence under that subsection or another person.
- (7) A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception—
- (a) the person or the victim or both of them are in England or Wales,

(b) neither the person nor the victim is in England or Wales but at least one of them is habitually resident in England and Wales, or

(c) neither the person nor the victim is in the United Kingdom but at least one of them is a UK national.

(8) 'UK national' means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 is a British subject; or

(c) a British protected person within the meaning of that Act.

(9) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(10) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference to 12 months in subsection (9)

(a) is to be read as a reference to six months.

122 Offence of forced marriage: Scotland

(1) A person commits an offence under the law of Scotland if he or she—

(a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and

(b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.

(2) In relation to a victim who is incapable of consenting to marriage by reason of mental disorder, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form of coercion).

(3) A person commits an offence under the law of Scotland if he or she—

(a) practises any form of deception with the intention of causing another person to leave the United Kingdom, and

(b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in Scotland.

(4) 'Marriage' means any religious or civil ceremony of marriage (whether or not legally binding).

(5) 'Mental disorder' has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

(6) It is irrelevant whether the conduct mentioned in paragraph (a) of subsection (1) is directed at the victim of the offence under that subsection or another person.

(7) A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception—

(a) the person or the victim or both of them are in Scotland,

(b) neither the person nor the victim is in Scotland but at least one of them is habitually resident in Scotland, or

(c) neither the person nor the victim is in the United Kingdom but at least one of them is a UK national.

(8) 'UK national' means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 is a British subject; or

(c) a British protected person within the meaning of that Act.

- (9) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or both.

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014
(2014 asp 5)

PART 1
MARRIAGE

Chapter 1
Same Sex Marriage

4 Meaning of marriage and related expressions in enactments and documents

- (1) References (however expressed) in any enactment to—
- (a) marriage (including a marriage that has ended),
 - (b) a person who is (or was) married to another person, and
 - (c) two people who are (or were) married to each other,
- are references to marriage whether between persons of different sexes or persons of the same sex and to a party (or former party), or as the case may be the parties (or former parties), to such a marriage.
- (2) Subsection (3) applies to references (however expressed) in any enactment to two people who—
- (a) are (or were) not married to each other, but
 - (b) are (or were) living together as if they were husband and wife.
- (3) The references include two people of the same sex who are (or were) not married to, nor in civil partnership with, each other but who are (or were) living together as if they were married to each other.
- (4) References (however expressed) in any enactment to two people of the same sex who are (or were) living together as if they were in a civil partnership cease to have effect.
- (5) Subsections (1) to (4)—
- (a) apply to enactments (other than private Acts) passed or made before the commencement of this section, and
 - (b) do not apply in so far as the enactment, or any other enactment, provides otherwise.
- (6) In so far as being (or having been) married or in a purported marriage is relevant for the operation of any rule of law, the rule of law applies equally in relation to marriage or purported marriage to a person of a different sex and marriage or purported marriage to a person of the same sex.
- (7) Subsections (1) to (6) are subject to an order under subsection (8).
- (8) The Scottish Ministers may by order provide for any of subsections (1) to (6)—
- (a) to have effect subject to provision made by the order, or
 - (b) not to apply in cases specified in the order.
- (9) An order under subsection (8)—
- (a) may make different provision for different purposes,
 - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
 - (c) may modify any enactment (including this Act),
 - (d) is (except where subsection (10) applies) subject to the negative procedure.
- (10) An order under subsection (8) which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.

- (11) References (however expressed) in any document to—
- (a) marriage (including a marriage that has ended),
 - (b) a person who is (or was) married to another person, and
 - (c) two people who are (or were) married to each other,
- are references to marriage whether between persons of different sexes or persons of the same sex and to a party (or former party), or as the case may be the parties (or former parties), to such a marriage.
- (12) The following expressions in any document have the meanings given—
- (a) ‘widow’ includes a woman whose marriage to another woman ended with the other woman’s death,
 - (b) ‘widower’ includes a man whose marriage to another man ended with the other man’s death.
- (13) Subsections (11) and (12)—
- (a) apply to documents executed on or after the commencement of this section, and
 - (b) do not apply in so far as the document provides otherwise.
- (14) In section 26(2) of the 1977 Act (interpretation), after the definition of ‘authorised registrar’ insert—
- “marriage’ means marriage between persons of different sexes and marriage between persons of the same sex;’.
- (15) In schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 (definitions of words and expressions), insert at the appropriate place in alphabetical order—
- “‘marriage’ means marriage between persons of different sexes and marriage between persons of the same sex (and any reference to a person being (or having been) married to another person, or to two people being (or having been) married to each other, is to be read accordingly),’,
- “‘widow’ includes a woman whose marriage to another woman ended with the other woman’s death,’,
- “‘widower’ includes a man whose marriage to another man ended with the other man’s death,’.

Chapter 2

Marriage Between Civil Partners in Qualifying Civil Partnerships

9 Power to modify meaning of ‘qualifying civil partnership’

- (1) The Scottish Ministers may by order modify the meaning of ‘qualifying civil partnership’ given by section 5(6) of the 1977 Act (inserted by section 8(3)(b) of this Act) so as to include civil partnerships registered outside Scotland.
- (2) An order under subsection (1)—
- (a) may make different provision for different purposes,
 - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
 - (c) may modify any enactment (including this Act),
 - (d) is subject to the affirmative procedure.
- (3) Before laying a draft of an order under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
- (a) the Registrar General of Births, Deaths and Marriages for Scotland, and
 - (b) such other persons as the Scottish Ministers consider appropriate.

10 Change of qualifying civil partnership into marriage

- (1) The Scottish Ministers may by regulations make provision to establish a procedure for the parties to a qualifying civil partnership to change their civil partnership into a marriage.
- (2) Regulations under subsection (1) may in particular make provision—

- (a) about the making by the parties to a qualifying civil partnership of an application to change their civil partnership into a marriage,
- (b) about the information to be provided in support of an application,
- (c) about the provision of evidence in support of an application,
- (d) for persons who have made an application to appear before any person or appear at any place,
- (e) conferring functions on persons in relation to applications,
- (f) for fees, of such amounts as are specified in or determined in accordance with the regulations, to be payable in respect of—
 - (i) the making of an application,
 - (ii) the exercise of any function conferred by virtue of paragraph (e).
- (3) Functions conferred by virtue of subsection (2)(e) may include functions relating to—
 - (a) the recording of information relating to qualifying civil partnerships changing into marriages,
 - (b) the issuing of certified copies of any information recorded.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult the Registrar General of Births, Deaths and Marriages for Scotland.
- (5) Regulations under subsection (1)—
 - (a) may make different provision for different purposes,
 - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
 - (c) may modify any enactment (including this Act),
 - (d) are (except where subsection (6) applies) subject to the negative procedure.
- (6) Regulations under subsection (1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (7) In this section ‘qualifying civil partnership’ has the meaning given by [section 5(6)(i)(A) of the 1977 Act].

11 Effect of marriage between civil partners in a qualifying civil partnership

- (1) This section applies where civil partners in a qualifying civil partnership (within the meaning of section 5(6) of the 1977 Act)—
 - (a) marry in accordance with that Act, or
 - (b) change their civil partnership into a marriage in accordance with provision made under section 10(1).
- (2) Where this section applies—
 - (a) the qualifying civil partnership ends on the date on which—
 - (i) the marriage was solemnised, or
 - (ii) the change took effect, and
 - (b) the civil partners are to be treated as having been married to each other since the date on which the qualifying civil partnership was registered.
- (3) For the purposes of subsection (2)(b)—
 - (a) a civil partnership registered under an Order in Council made under section 210 of the 2004 Act is to be treated as having been registered when it is entered in the Register Book maintained under the Order,
 - (b) a civil partnership registered under an Order in Council made under section 211 of the 2004 Act is to be treated as having been registered when the civil partnership register is signed in accordance with the Order.
- (4) Subsection (2)(b) is subject to—
 - (a) any provision to the contrary made by or under any enactment,
 - (b) an order under subsection (5).
- (5) The Scottish Ministers may by order provide for subsection (2)(b)—
 - (a) to have effect subject to provision made by the order, or
 - (b) not to apply in cases specified in the order.
- (6) An order under subsection (5)—

(a) may include consequential, supplementary, incidental, transitional, transitory or saving provision,

(b) is subject to the negative procedure.

(7) If a decree of aliment under section 3 of the Family Law (Scotland) Act 1985 (powers of court in action for aliment) requiring one of the civil partners to make payments to the other is in force at the time the qualifying civil partnership ends by virtue of subsection (2)(a) of this section, the decree continues to have effect despite the ending of the civil partnership.

(8) If an order under section 103(3) or (4) of the 2004 Act (regulation by court of rights of occupancy of family home) is in force at the time the qualifying civil partnership ends by virtue of subsection (2)(a) of this section the order has effect from that time as if made under section 3(3) or, as the case may be, 3(4) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (regulation by court of rights of occupancy of matrimonial home).

(9) [*Amends Civil Partnership Act 2004.*]

PART 3

MARRIAGE AND CIVIL PARTNERSHIP: OTHER PROVISION

28 Bigamy

...

(3) The common law offence of bigamy is abolished.

...

SUCCESSION (SCOTLAND) ACT 2016 (2016 asp 7)

1 Effect of divorce, dissolution or annulment on will

(1) This section applies where—

(a) a person ('the testator') by a will—

(i) confers a benefit or power of appointment on a person, or

(ii) appoints a person as a trustee or executor,

(b) that person ('P') is, or becomes, the testator's spouse or civil partner,

(c) the marriage or civil partnership is terminated, and

(d) the testator then dies.

(2) P is to be treated as having died before the testator for the purposes of the will except for the purposes of any appointment of P or another person as a guardian.

(3) Subsection (2) does not apply if the will expressly provides that P is to—

(a) have the benefit or power of appointment, or

(b) be so appointed as a trustee or executor,

even if the marriage or civil partnership is terminated.

(4) For the purposes of this section, a marriage is terminated in the event of divorce or annulment and a civil partnership is terminated in the event of dissolution or annulment.

(5) In this section, references to 'divorce', 'dissolution' and 'annulment' are to divorce, dissolution or annulment—

(a) obtained from a court of civil jurisdiction in the United Kingdom, the Channel Islands or the Isle of Man, or

(b) if not so obtained, the validity of which is recognised in Scotland.

2 Effect of divorce, dissolution or annulment on special destination

(1) This section applies where—

(a) property is held in the name of—

(i) a person ('A') and A's spouse or civil partner ('B') and the survivor of them,

(ii) A, B and another person or other persons and the survivor or survivors of them,

(iii) A with a special destination, on A's death, in favour of B,

(b) A and B's marriage or civil partnership is terminated, and

(c) A then dies.

(2) In relation to the succession to the property mentioned in subsection (1)(a) on A's death, B is to be treated as having died before A.

(3) Subsection (2) does not apply if the document under which the property is held expressly provides that succession to the property is to be unaffected by A and B's marriage or civil partnership being terminated.

(4) If a person has in good faith and for value (whether by purchase or otherwise) acquired title to the property, that title is not to be challengeable on the ground that, by virtue of subsection (2), the property falls to A's estate.

(5) For the purposes of this section, a marriage is terminated in the event of divorce or annulment and a civil partnership is terminated in the event of dissolution or annulment.

(6) In this section, references to 'divorce', 'dissolution' and 'annulment' are to divorce, dissolution or annulment—

(a) obtained from a court of civil jurisdiction in the United Kingdom, the Channel Islands or the Isle of Man, or

(b) if not so obtained, the validity of which is recognised in Scotland.

9 Uncertainty of survivorship treated as failure to survive

(1) Where two persons die simultaneously or in circumstances in which it is uncertain who survived whom, each is to be treated as having failed to survive the other for all purposes affecting title or succession to property.

(2) Where a person mentioned in subsection (1) ('the testator') by a will confers a benefit on a person on the condition that the other person mentioned in subsection (1) dies before the testator, the condition that the person dies before the testator (however it is expressed) is to be read as a condition that the person fails to survive the testator.

(3) This section is subject to section 10.

BANKRUPTCY (SCOTLAND) ACT 2016 (2016 asp 21)

15 Jurisdiction

(1) Where a petition is presented for the sequestration of the estate of a debtor (whether living or deceased), the sheriff has jurisdiction if, at the relevant time, the debtor—

(a) had an established place of business in the sheriffdom, or

(b) was habitually resident in the sheriffdom.

(2) AiB may determine a debtor application for the sequestration of the estate of a living or deceased debtor if, at the relevant time, the debtor—

(a) had an established place of business in Scotland, or

(b) was habitually resident in Scotland.

(3) Where a petition is presented for the sequestration of the estate of an entity which may be sequestrated by virtue of section 6, the sheriff has jurisdiction if the entity—

(a) had at the relevant time an established place of business in the sheriffdom, or

(b) was constituted or formed under Scots law and at any time carried on business in the sheriffdom.

(4) AiB may determine a debtor application for the sequestration of the estate of such an entity if the entity—

(a) had at the relevant time an established place of business in Scotland, or

(b) was constituted or formed under Scots law and at any time carried on business in Scotland.

(5) Even where a person (whether living or deceased) does not fall within subsection (1), the sheriff has jurisdiction in respect of the sequestration of that person's estate if—

(a) a petition has been presented for the sequestration of the estate of a partnership of which the person is, or was at the relevant time before dying, a partner, and

(b) the process of that sequestration is still current.

(6) Subsection (7) applies as regards any proceedings under this Act which—

(a) may be brought before a sheriff, and

(b) relate either to a debtor application or to the sequestration of a debtor's estate following any such application.

(7) The proceedings are to be brought before the sheriff who, under subsection (1) or (3), would have jurisdiction in respect of a petition for sequestration of the debtor's estate.

(8) References in this section to 'the relevant time' are to any time in the year immediately preceding (as the case may be)—

(a) the date of presentation of the petition,

(b) the date the debtor application is made, or

(c) the debtor's date of death.

(9) This section is subject to Article 3 of the [EU] insolvency proceedings regulation.

Subsection (9) omitted by SI 2019/94, reg 4(9).

EUROPEAN UNION (WITHDRAWAL) ACT 2018 (2018 c 16)

These provisions are reproduced as amended by the European Union (Withdrawal Agreement) Act 2020. At the date of going to press ss 2–4 were not in force.

Repeal of the ECA

1 Repeal of the European Communities Act 1972

The European Communities Act 1972 is repealed on exit day.

[Savings for implementation period]

[1A Saving for ECA for implementation period

(1) Subsections (2) to (4) have effect despite the repeal of the European Communities Act 1972 on exit day by section 1.

(2) The European Communities Act 1972, as it has effect in domestic law or the law of a relevant territory immediately before exit day, continues to have effect in domestic law or the law of the relevant territory on and after exit day so far as provided by subsections (3) to (5).

(3) The Act of 1972 has effect on and after exit day as if—

(a) the definitions of 'the Treaties' and 'the EU Treaties' given by section 1(2) to (4) (interpretation)—

(i) included Part 4 of the withdrawal agreement (implementation period), other than that Part so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy, but

(ii) were otherwise limited to anything which falls within those definitions as at immediately before exit day so far as it is not excluded by regulations made on or after exit day by a Minister of the Crown under this subparagraph,

(b) the reference in section 2(2) to the objects of the EU were a reference to

those objects so far as they are applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement,

- (c) section 2(3) (payment of EU costs etc) were omitted,
- (d) in section 3 (decisions on, and proof of, EU Treaties and EU instruments etc)—

- (i) the references to the Treaties in subsections (1) and (2) included the withdrawal agreement, and

- (ii) the words in brackets in subsection (1) only applied so far as they are in accordance with Part 4 of the withdrawal agreement,

- (e) references in sections 5 and 6 (customs duties and common agricultural policy) to the common customs tariff of the EU, directly applicable EU provision, the exclusion of customs duties, EU arrangements and agricultural levies of the EU were to such things so far as they are applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement, and

- (f) in Part 2 of Schedule 1 (general definitions in relation to the EU)—

- (i) in the definition of ‘EU customs duty’, the reference to directly applicable EU provision were to such provision so far as it is applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement, and

- (ii) in the definition of ‘Member’ in the expression ‘member State’, after ‘EU’ there were inserted ‘ and for the purposes of this expression the United Kingdom is to be treated as if it were a member of the EU during the implementation period (within the meaning given by section 1A(6) of the European Union (Withdrawal) Act 2018) ‘.

(4) In this section ‘relevant territory’ means the Isle of Man, any of the Channel Islands or Gibraltar.

(5) Subsections (1) to (4) are repealed on IP completion day.

(6) In this Act—

‘the implementation period’ means the transition or implementation period provided for by Part 4 of the withdrawal agreement and beginning with exit day and ending on IP completion day;

‘IP completion day’ (and related expressions) have the same meaning as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) to (5) of that Act);

‘withdrawal agreement’ has the same meaning as in that Act (see section 39(1) and (6) of that Act).

(7) In this Act—

- (a) references to the European Communities Act 1972 are to be read, so far as the context permits or requires, as being or (as the case may be) including references to that Act as it continues to have effect by virtue of subsections (2) to (4) above, and

- (b) references to any Part of the withdrawal agreement or the EEA EFTA separation agreement include references to any other provisions of that agreement so far as applying to that Part.]

[1B Saving for EU-derived domestic legislation for implementation period

(1) Subsections (2) to (5) have effect despite the repeal of the European Communities Act 1972 on exit day by section 1.

(2) EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day, subject as follows.

(3) Any enactment which continues to have effect by virtue of subsection (2) is to be read, on and after exit day and so far as the context permits or requires, as if—

- (a) any reference to an expression which is to be read in accordance with Schedule 1 to the Interpretation Act 1978 and is an expression defined by

section 1 of, or Part 2 of Schedule 1 to, the European Communities Act 1972 were a reference to that expression as defined by that section or that Part of that Schedule as it continues to have effect by virtue of section 1A(2) to (4) of this Act,

(b) any reference (however expressed and subject to paragraph (a) above) to—

(i) EU law,

(ii) any particular EU Treaty or any part of it,

(iii) any EU instrument, or other document of an EU entity or of the EU, or any part of any such instrument or document,

(iv) any part of EU law not falling within sub-paragraph (ii) or (iii),

(v) any tax, duty, levy or interests of the EU, or

(vi) any arrangement involving, or otherwise relating to, the EU of a kind not falling within sub-paragraph (i), (ii), (iii), (iv) or (v),
were a reference to any such thing so far as it is applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement,

(c) any reference (however expressed and subject to paragraph (a) above) to the European Communities Act 1972 were or (as the case may be) included a reference to the Act of 1972 as it continues to have effect by virtue of section 1A(2) to (4) of this Act,

(d) any reference (however expressed) to the area of the EU or of the EEA included the United Kingdom,

(e) any reference (however expressed) to a citizen of the EU or a national of the EEA included a United Kingdom national (within the meaning given by Article 2(d) of the withdrawal agreement), and

(f) such other modifications were made as—

(i) are provided for by regulations under section 8A or Part 1A of Schedule 2, or

(ii) so far as not so provided, are necessary for any purpose of Part 4 of the withdrawal agreement and are capable of being ascertained from any such purpose or otherwise from that Part of that agreement.

(4) Any EU-derived domestic legislation which is an enactment passed or made on or after exit day and before IP completion day is, unless the contrary intention appears, to be read in accordance with subsection (3) (and anything done or omitted to be done in connection with any such enactment is to be understood, and has effect, accordingly).

(5) Subsections (2) to (4) are subject to any regulations made under section 8A or 23 or Part 1A of Schedule 2 or otherwise under this Act or under the European Union (Withdrawal Agreement) Act 2020.

(6) Subsections (1) to (5) are repealed on IP completion day.

(7) In this Act ‘EU-derived domestic legislation’ means any enactment so far as—

(a) made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972,

(b) passed or made, or operating, for a purpose mentioned in section 2(2)(a) or (b) of that Act,

(c) relating to—

(i) anything which falls within paragraph (a) or (b), or

(ii) any rights, powers, liabilities, obligations, restrictions, remedies or procedures which are recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, or

(d) relating otherwise to the EU or the EEA,

but does not include any enactment contained in the European Communities Act 1972 or any enactment contained in this Act or the European Union (Withdrawal Agreement) Act 2020 or in regulations made under this Act or the Act of 2020.]

*Retention of [saved EU law at end of implementation period]***2 Saving for EU-derived domestic legislation**

(1) EU-derived domestic legislation, as it has effect in domestic law immediately before [IP completion day], continues to have effect in domestic law on and after [IP completion day].

[...]

(3) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation) [and section 5A (savings and incorporation: supplementary)].

3 Incorporation of direct EU legislation

(1) Direct EU legislation, so far as operative immediately before [IP completion day], forms part of domestic law on and after [IP completion day].

(2) In this Act ‘direct EU legislation’ means—

(a) any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before [IP completion day] and so far as—

[(ai) it is applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement,

(bi) it neither has effect nor is to have effect by virtue of section 7A or 7B,]

(i) it is not an exempt EU instrument (for which see section 20(1) and Schedule 6), [and]

[...]

(iii) its effect is not reproduced in an enactment to which section 2(1) applies,

(b) any Annex to the EEA agreement, as it has effect in EU law immediately before [IP completion day] and so far as—

[(ai) it is applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement,

(bi) it neither has effect nor is to have effect by virtue of section 7A or 7B,]

(i) it refers to, or contains adaptations of, anything falling within paragraph (a), and

(ii) its effect is not reproduced in an enactment to which section 2(1) applies, or

(c) Protocol 1 to the EEA agreement (which contains horizontal adaptations that apply in relation to EU instruments referred to in the Annexes to that agreement), as it has effect in EU law immediately before [IP completion day].

[(i) it is applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement,

(ii) it neither has effect nor is to have effect by virtue of section 7A or 7B,]

(3) For the purposes of this Act, any direct EU legislation is operative immediately before [IP completion day] if—

(a) in the case of anything which comes into force at a particular time and is stated to apply from a later time, it is in force and applies immediately before [IP completion day],

(b) in the case of a decision which specifies to whom it is addressed, it has been notified to that person before [IP completion day], and

(c) in any other case, it is in force immediately before exit day.

(4) This section—

(a) brings into domestic law any direct EU legislation only in the form of the English language version of that legislation, and

(b) does not apply to any such legislation for which there is no such version, but paragraph (a) does not affect the use of the other language versions of that legislation for the purposes of interpreting it.

(5) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation) [and section 5A (savings and incorporation: supplementary)].

4 Saving for rights etc under section 2(1) of the ECA

(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before [IP completion day]—

- (a) are recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, and
 - (b) are enforced, allowed and followed accordingly,
- continue on and after [IP completion day] to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

(2) Subsection (1) does not apply to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they—

- (a) form part of domestic law by virtue of section 3,
 - [aa) are, or are to be, recognised and available in domestic law (and enforced, allowed and followed accordingly) by virtue of section 7A or 7B,] or
 - (b) arise under an EU directive (including as applied by the EEA agreement) and are not of a kind recognised by the European Court or any court or tribunal in the United Kingdom in a case decided before [IP completion day] (whether or not as an essential part of the decision in the case).

(3) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation) [and section 5A (savings and incorporation: supplementary)].

5 Exceptions to savings and incorporation

(1) The principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made on or after [IP completion day].

(2) Accordingly, the principle of the supremacy of EU law continues to apply on or after [IP completion day] so far as relevant to the interpretation, disapplication or quashing of any enactment or rule of law passed or made before [IP completion day].

(3) Subsection (1) does not prevent the principle of the supremacy of EU law from applying to a modification made on or after [IP completion day] of any enactment or rule of law passed or made before [IP completion day] if the application of the principle is consistent with the intention of the modification.

(4) The Charter of Fundamental Rights is not part of domestic law on or after [IP completion day].

(5) Subsection (4) does not affect the retention in domestic law on or after [IP completion day] in accordance with this Act of any fundamental rights or principles which exist irrespective of the Charter (and references to the Charter in any case law are, so far as necessary for this purpose, to be read as if they were references to any corresponding retained fundamental rights or principles).

(6) Schedule 1 (which makes further provision about exceptions to savings and incorporation) has effect.

[7) Subsections (1) to (6) and Schedule 1 are subject to relevant separation agreement law (for which see section 7C).]

[5A Savings and incorporation: supplementary

The fact that anything which continues to be, or forms part of, domestic law on or after IP completion day by virtue of section 2, 3 or 4 has an effect immediately before IP completion day which is time-limited by reference to the implementation period does not prevent it from having an indefinite effect on and after IP completion day by virtue of section 2, 3 or 4.]

6 Interpretation of retained EU law

- (1) A court or tribunal—
 - (a) is not bound by any principles laid down, or any decisions made, on or after [IP completion day] by the European Court, and
 - (b) cannot refer any matter to the European Court on or after [IP completion day].

(2) Subject to this and subsections (3) to (6), a court or tribunal may have regard to anything done on or after [IP completion day] by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

(3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after [IP completion day] and so far as they are relevant to it—

(a) in accordance with any retained case law and any retained general principles of EU law, and

(b) having regard (among other things) to the limits, immediately before [IP completion day], of EU competences.

(4) But—

(a) the Supreme Court is not bound by any retained EU case law,

(b) the High Court of Justiciary is not bound by any retained EU case law when—

(i) sitting as a court of appeal otherwise than in relation to a compatibility issue (within the meaning given by section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995) or a devolution issue (within the meaning given by paragraph 1 of Schedule 6 to the Scotland Act 1998), or

(ii) sitting on a reference under section 123(1) of the Criminal Procedure (Scotland) Act 1995,

[(ba) a relevant court or relevant tribunal is not bound by any retained EU case law so far as is provided for by regulations under subsection (5A),] and

(c) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by.

(5) In deciding whether to depart from any retained EU case law [by virtue of subsection (4)(a) or (b)], the Supreme Court or the High Court of Justiciary must apply the same test as it would apply in deciding whether to depart from its own case law.

[(5A) A Minister of the Crown may by regulations provide for—

(a) a court or tribunal to be a relevant court or (as the case may be) a relevant tribunal for the purposes of this section,

(b) the extent to which, or circumstances in which, a relevant court or relevant tribunal is not to be bound by retained EU case law,

(c) the test which a relevant court or relevant tribunal must apply in deciding whether to depart from any retained EU case law, or

(d) considerations which are to be relevant to—

(i) the Supreme Court or the High Court of Justiciary in applying the test mentioned in subsection (5), or

(ii) a relevant court or relevant tribunal in applying any test provided for by virtue of paragraph (c) above.

(5B) Regulations under subsection (5A) may (among other things) provide for—

(a) the High Court of Justiciary to be a relevant court when sitting otherwise than as mentioned in subsection (4)(b)(i) and (ii),

(b) the extent to which, or circumstances in which, a relevant court or relevant tribunal not being bound by retained EU case law includes (or does not include) that court or tribunal not being bound by retained domestic case law which relates to retained EU case law,

(c) other matters arising in relation to retained domestic case law which relates to retained EU case law (including by making provision of a kind which could be made in relation to retained EU case law), or

(d) the test mentioned in paragraph (c) of subsection (5A) or the considerations mentioned in paragraph (d) of that subsection to be determined (whether with or without the consent of a Minister of the Crown) by a person mentioned in subsection (5C)(a) to (e) or by more than one of those persons acting jointly.

(5C) Before making regulations under subsection (5A), a Minister of the Crown must consult—

- (a) the President of the Supreme Court,
- (b) the Lord Chief Justice of England and Wales,
- (c) the Lord President of the Court of Session,
- (d) the Lord Chief Justice of Northern Ireland,
- (e) the Senior President of Tribunals, and
- (f) such other persons as the Minister of the Crown considers appropriate.

(5D) No regulations may be made under subsection (5A) after IP completion day.]

(6) Subsection (3) does not prevent the validity, meaning or effect of any retained EU law which has been modified on or after [IP completion day] from being decided as provided for in that subsection if doing so is consistent with the intention of the modifications.

[(6A) Subsections (1) to (6) are subject to relevant separation agreement law (for which see section 7C).]

(7) In this Act—

‘retained case law’ means—

- (a) retained domestic case law, and
- (b) retained EU case law;

‘retained domestic case law’ means any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before [IP completion day] and so far as they—

- (a) relate to anything to which section 2, 3 or 4 applies, and
- (b) are not excluded by section 5 or Schedule 1,

(as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

‘retained EU case law’ means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before [IP completion day] and so far as they—

- (a) relate to anything to which section 2, 3 or 4 applies, and
- (b) are not excluded by section 5 or Schedule 1,

(as those principles and decisions are modified by or under this Act or by other domestic law from time to time);

‘retained EU law’ means anything which, on or after [IP completion day], continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time);

‘retained general principles of EU law’ means the general principles of EU law, as they have effect in EU law immediately before [IP completion day] and so far as they—

- (a) relate to anything to which section 2, 3 or 4 applies, and
- (b) are not excluded by section 5 or Schedule 1,

(as those principles are modified by or under this Act or by other domestic law from time to time).

7 Status of retained EU law

(1) Anything which—

(a) was, immediately before exit day, primary legislation of a particular kind, subordinate legislation of a particular kind or another enactment of a particular kind, and

(b) continues to be domestic law on and after exit day by virtue of [section 1A(2) or 18(2)],

continues to be domestic law as an enactment of the same kind.

[(1A) Anything which—

(a) was, immediately before IP completion day, primary legislation of a

particular kind, subordinate legislation of a particular kind or another enactment of a particular kind, and

(b) continues to be domestic law on and after IP completion day by virtue of section 2,

continues to be domestic law as an enactment of the same kind.]

(2) Retained direct principal EU legislation cannot be modified by any primary or subordinate legislation other than—

(a) an Act of Parliament,

(b) any other primary legislation (so far as it has the power to make such a modification), or

(c) any subordinate legislation so far as it is made under a power which permits such a modification by virtue of—

(i) paragraph 3, 5(3)(a) or (4)(a), 8(3), 10(3)(a) or (4)(a), 11(2)(a) or 12(3) of Schedule 8,

(ii) any other provision made by or under this Act,

(iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or

(iv) any provision made on or after the passing of this Act by or under primary legislation.

(3) Retained direct minor EU legislation cannot be modified by any primary or subordinate legislation other than—

(a) an Act of Parliament,

(b) any other primary legislation (so far as it has the power to make such a modification), or

(c) any subordinate legislation so far as it is made under a power which permits such a modification by virtue of—

(i) paragraph 3, 5(2) or (4)(a), 8(3), 10(2) or (4)(a) or 12(3) of Schedule 8,

(ii) any other provision made by or under this Act,

(iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or

(iv) any provision made on or after the passing of this Act by or under primary legislation.

(4) Anything which is retained EU law by virtue of section 4 cannot be modified by any primary or subordinate legislation other than—

(a) an Act of Parliament,

(b) any other primary legislation (so far as it has the power to make such a modification), or

(c) any subordinate legislation so far as it is made under a power which permits such a modification by virtue of—

(i) paragraph 3, 5(3)(b) or (4)(b), 8(3), 10(3)(b) or (4)(b), 11(2)(b) or 12(3) of Schedule 8,

(ii) any other provision made by or under this Act,

(iii) any provision made by or under an Act of Parliament passed before, and in the same Session as, this Act, or

(iv) any provision made on or after the passing of this Act by or under primary legislation.

(5) For other provisions about the status of retained EU law, see—

(a) section 5(1) to (3) [and (7)] (status of retained EU law in relation to other enactments or rules of law),

(b) section 6 (status of retained case law and retained general principles of EU law),

[(ba) section 7C (status of case law of European Court etc in relation to retained EU law which is relevant separation agreement law),]

(c) section 15(2) and Part 2 of Schedule 5 (status of retained EU law for the purposes of the rules of evidence),

(d) paragraphs 13 to 16 of Schedule 8 (affirmative and enhanced scrutiny

procedure for, and information about, instruments which amend or revoke subordinate legislation under section 2(2) of the European Communities Act 1972 including subordinate legislation implementing EU directives),

(e) paragraphs 19 and 20 of that Schedule (status of certain retained direct EU legislation for the purposes of the Interpretation Act 1978), and

(f) paragraph 30 of that Schedule (status of retained direct EU legislation for the purposes of the Human Rights Act 1998).

(6) In this Act—

‘retained direct minor EU legislation’ means any retained direct EU legislation which is not retained direct principal EU legislation;

‘retained direct principal EU legislation’ means—

(a) any EU regulation so far as it—

(i) forms part of domestic law on and after exit day by virtue of section 3, and

(ii) was not EU tertiary legislation immediately before [IP completion day], or

(b) any Annex to the EEA agreement so far as it—

(i) forms part of domestic law on and after [IP completion day] by virtue of section 3, and

(ii) refers to, or contains adaptations of, any EU regulation so far as it falls within paragraph (a),

(as modified by or under this Act or by other domestic law from time to time).

[Further aspects of withdrawal]

[7A General implementation of remainder of withdrawal agreement]

(1) Subsection (2) applies to—

(a) all such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the withdrawal agreement, and

(b) all such remedies and procedures from time to time provided for by or under the withdrawal agreement,

as in accordance with the withdrawal agreement are without further enactment to be given legal effect or used in the United Kingdom.

(2) The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be—

(a) recognised and available in domestic law, and

(b) enforced, allowed and followed accordingly.

(3) Every enactment (including an enactment contained in this Act) is to be read and has effect subject to subsection (2).

(4) This section does not apply in relation to Part 4 of the withdrawal agreement so far as section 2(1) of the European Communities Act 1972 applies in relation to that Part.

(5) See also (among other things)—

(a) Part 3 of the European Union (Withdrawal Agreement) Act 2020 (further provision about citizens’ rights),

(b) section 20 of that Act (financial provision),

(c) section 7C of this Act (interpretation of law relating to withdrawal agreement etc.),

(d) section 8B of this Act (power in connection with certain other separation issues),

(e) section 8C of this Act (power in connection with the Protocol on Ireland/Northern Ireland in withdrawal agreement), and

(f) Parts 1B and 1C of Schedule 2 to this Act (powers involving devolved authorities in connection with certain other separation issues and the Ireland/Northern Ireland Protocol).]

[7B General implementation of EEA EFTA and Swiss agreements

(1) Subsection (2) applies to all such rights, powers, liabilities, obligations, restrictions, remedies and procedures as—

(a) would from time to time be created or arise, or (in the case of remedies or procedures) be provided for, by or under the EEA EFTA separation agreement or the Swiss citizens' rights agreement, and

(b) would, in accordance with Article 4(1) of the withdrawal agreement, be required to be given legal effect or used in the United Kingdom without further enactment,

if that Article were to apply in relation to the EEA EFTA separation agreement and the Swiss citizens' rights agreement, those agreements were part of EU law and the relevant EEA states and Switzerland were member States.

(2) The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be—

(a) recognised and available in domestic law, and

(b) enforced, allowed and followed accordingly.

(3) Every enactment (other than section 7A but otherwise including an enactment contained in this Act) is to be read and has effect subject to subsection (2).

(4) See also (among other things)—

(a) Part 3 of the European Union (Withdrawal Agreement) Act 2020 (further provision about citizens' rights),

(b) section 7C of this Act (interpretation of law relating to the EEA EFTA separation agreement and the Swiss citizens' rights agreement etc),

(c) section 8B of this Act (power in connection with certain other separation issues), and

(d) Part 1B of Schedule 2 to this Act (powers involving devolved authorities in connection with certain other separation issues).

(5) In this section 'the relevant EEA states' means Norway, Iceland and Liechtenstein.

(6) In this Act 'EEA EFTA separation agreement' and 'Swiss citizens' rights agreement' have the same meanings as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act).]

[7C Interpretation of relevant separation agreement law

(1) Any question as to the validity, meaning or effect of any relevant separation agreement law is to be decided, so far as they are applicable—

(a) in accordance with the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement, and

(b) having regard (among other things) to the desirability of ensuring that, where one of those agreements makes provision which corresponds to provision made by another of those agreements, the effect of relevant separation agreement law in relation to the matters dealt with by the corresponding provision in each agreement is consistent.

(2) See (among other things)—

(a) Article 4 of the withdrawal agreement (methods and principles relating to the effect, the implementation and the application of the agreement),

(b) Articles 158 and 160 of the withdrawal agreement (jurisdiction of the European Court in relation to Part 2 and certain provisions of Part 5 of the agreement),

(c) Articles 12 and 13 of the Protocol on Ireland/Northern Ireland in the withdrawal agreement (implementation, application, supervision and enforcement of the Protocol and common provisions),

(d) Article 4 of the EEA EFTA separation agreement (methods and principles relating to the effect, the implementation and the application of the agreement), and

- (e) Article 4 of the Swiss citizens' rights agreement (methods and principles relating to the effect, the implementation and the application of the agreement).
- (3) In this Act 'relevant separation agreement law' means—
- (a) any of the following provisions or anything which is domestic law by virtue of any of them—
- (i) section 7A, 7B, 8B or 8C or Part 1B or 1C of Schedule 2 or this section, or
- (ii) Part 3, or section 20, of the European Union (Withdrawal Agreement) Act 2020 (citizens' rights and financial provision), or
- (b) anything not falling within paragraph (a) so far as it is domestic law for the purposes of, or otherwise within the scope of—
- (i) the withdrawal agreement (other than Part 4 of that agreement),
- (ii) the EEA EFTA separation agreement, or
- (iii) the Swiss citizens' rights agreement,
- as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time.]

Main powers in connection with withdrawal

8 Dealing with deficiencies arising from withdrawal

(1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate—

- (a) any failure of retained EU law to operate effectively, or
- (b) any other deficiency in retained EU law,
- arising from the withdrawal of the United Kingdom from the EU.
- (2) Deficiencies in retained EU law are where the Minister considers that retained EU law—
- (a) contains anything which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant,
- (b) confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the United Kingdom or any part of it,
- (c) makes provision for, or in connection with, reciprocal arrangements between—
- (i) the United Kingdom or any part of it or a public authority in the United Kingdom, and
- (ii) the EU, an EU entity, a member State or a public authority in a member State,
- which no longer exist or are no longer appropriate,
- (d) makes provision for, or in connection with, other arrangements which—
- (i) involve the EU, an EU entity, a member State or a public authority in a member State, or
- (ii) are otherwise dependent upon the United Kingdom's membership of the EU [or Part 4 of the withdrawal agreement],
- and which no longer exist or are no longer appropriate,
- (e) makes provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer appropriate, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties [or as a result of either the end of the implementation period or any other effect of the withdrawal agreement],
- [(ea) is not clear in its effect as a result of the operation of any provision of sections 2 to 6 or Schedule 1,]
- (f) does not contain any functions or restrictions which—
- (i) were in an EU directive and in force immediately before [IP completion day] (including any power to make EU tertiary legislation), and

- (ii) it is appropriate to retain, or
 - (g) contains EU references which are no longer appropriate.
- (3) There is also a deficiency in retained EU law where the Minister considers that there is—
- (a) anything in retained EU law which is of a similar kind to any deficiency which falls within subsection (2), or
 - (b) a deficiency in retained EU law of a kind described, or provided for, in regulations made by a Minister of the Crown.
- (4) But retained EU law is not deficient merely because it does not contain any modification of EU law which is adopted or notified, comes into force or only applies on or after [IP completion day].
- (5) Regulations under subsection (1) may make any provision that could be made by an Act of Parliament.
- (6) Regulations under subsection (1) may (among other things) provide for functions of EU entities or public authorities in member States (including making an instrument of a legislative character or providing funding) to be—
- (a) exercisable instead by a public authority (whether or not established for the purpose) in the United Kingdom, or
 - (b) replaced, abolished or otherwise modified.
- (7) But regulations under subsection (1) may not—
- (a) impose or increase taxation or fees,
 - (b) make retrospective provision,
 - (c) create a relevant criminal offence,
 - (d) establish a public authority,
 - [...]
 - (f) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or
 - (g) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment).
- (8) No regulations may be made under this section after the end of the period of two years beginning with [IP completion day].
- (9) The reference in subsection (1) to a failure or other deficiency arising from the withdrawal of the United Kingdom from the EU includes a reference to any failure or other deficiency arising from—
- (a) any aspect of that withdrawal, including (among other things)—
 - (i) the end of the implementation period, or
 - (ii) any other effect of the withdrawal agreement, or
 - (b) that withdrawal, or any such aspect of it, taken together,]

with the operation of any provision, or the interaction between any provisions, made by or under this Act [or the European Union (Withdrawal Agreement) Act 2020].

[8A Supplementary power in connection with implementation period

- (1) A Minister of the Crown may by regulations—
- (a) provide for other modifications for the purposes of section 1B(3)(f)(i) (whether applying in all cases or particular cases or descriptions of case),
 - (b) provide for subsection (3) or (4) of section 1B not to apply to any extent in particular cases or descriptions of case,
 - (c) make different provision in particular cases or descriptions of case to that made by subsection (3) or (4) of that section,
 - (d) modify any enactment contained in this Act in consequence of any repeal made by section 1A(5) or 1B(6), or
 - (e) make such provision not falling within paragraph (a), (b), (c) or (d) as the

Minister considers appropriate for any purpose of, or otherwise in connection with, Part 4 of the withdrawal agreement.

(2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.

(3) In subsection (2) ‘enactment’ does not include primary legislation passed or made after IP completion day.

(4) No regulations may be made under subsection (1) after the end of the period of two years beginning with IP completion day.]

[8B Power in connection with certain other separation issues

(1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate—

(a) to implement Part 3 of the withdrawal agreement (separation provisions),

(b) to supplement the effect of section 7A in relation to that Part, or

(c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 7A and that Part).

(2) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate—

(a) to implement Part 3 of the EEA EFTA separation agreement (separation provisions),

(b) to supplement the effect of section 7B in relation to that Part, or

(c) otherwise for the purposes of dealing with matters arising out of, or related to, that Part (including matters arising by virtue of section 7B and that Part).

(3) Regulations under this section may make any provision that could be made by an Act of Parliament.

(4) Regulations under this section may (among other things) restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law by virtue of—

(a) section 7A above and Part 3 of the withdrawal agreement, or

(b) section 7B above and Part 3 of the EEA EFTA separation agreement.

(5) But regulations under this section may not—

(a) impose or increase taxation or fees,

(b) make retrospective provision,

(c) create a relevant criminal offence,

(d) establish a public authority,

(e) amend, repeal or revoke the Human Rights Act 1998 or any subordinate legislation made under it, or

(f) amend or repeal the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998 (unless the regulations are made by virtue of paragraph 21(b) of Schedule 7 to this Act or are amending or repealing any provision of those Acts which modifies another enactment).

(6) In this section references to Part 3 of the withdrawal agreement or of the EEA EFTA separation agreement include references to any provision of EU law which is applied by, or referred to in, that Part (to the extent of the application or reference).]

12 Retaining EU restrictions in devolution legislation etc

(1), (2) *amend the Scotland Act 1998.*

(3), (4) *amend the Government of Wales Act 2006.*

(5), (6) *amend the Northern Ireland Act 1998.*

(7) Part 1 of Schedule 3 (which makes corresponding provision in relation to executive competence to that made by subsections (1) to (6) in relation to legislative competence) has effect.

(8) Part 2 of Schedule 3 (which imposes reporting obligations on a Minister of the Crown in recognition of the fact that the powers to make regulations

conferred by subsections (1) to (6) and Part 1 of Schedule 3, and any restrictions arising by virtue of them, are intended to be temporary) has effect.

(9) A Minister of the Crown may by regulations—

(a) repeal any of the following provisions—

(i) section 30A or 57(4) to (15) of the Scotland Act 1998,

(ii) section 80(8) to (8L) or 109A of the Government of Wales Act 2006, or

(iii) section 6A or 24(3) to (15) of the Northern Ireland Act 1998, or

(b) modify any enactment in consequence of any such repeal.

(10) Until all of the provisions mentioned in subsection (9)(a) have been repealed, a Minister of the Crown must, after the end of each review period, consider whether it is appropriate—

(a) to repeal each of those provisions so far as it has not been repealed, or

(b) to revoke any regulations made under any of those provisions so far as they have not been revoked.

(11) In considering whether to exercise the power to make regulations under subsection (9), a Minister of the Crown must have regard (among other things) to—

(a) the fact that the powers to make regulations conferred by the provisions mentioned in subsection (9)(a), and any restrictions arising by virtue of them, are intended to be temporary and, where appropriate, replaced with other arrangements, and

(b) any progress which has been made in implementing those other arrangements.

(12) Part 3 of Schedule 3 (which contains amendments of devolution legislation not dealt with elsewhere) has effect.

(13) In this section—

‘arrangement’ means any enactment or other arrangement (whether or not legally enforceable);

‘review period’ means—

(a) the period of three months beginning with the day on which subsection (10) comes into force, and

(b) after that, each successive period of three months.

PART II

STATUTORY INSTRUMENTS

CIVIL JURISDICTION AND JUDGMENTS ACT 1982 (PROVISIONAL AND PROTECTIVE MEASURES) (SCOTLAND) ORDER 1997 (SI 1997/2780)

2. The Court of Session shall have power to do anything mentioned in section 27 (1) or 28 of the Civil Jurisdiction and Judgments Act 1982 in relation to proceedings of the following descriptions, namely:—
- (a) proceedings commenced otherwise than in a Brussels or [State bound by the Lugano Convention];
 - (b) proceedings whose subject-matter is not within the scope of the 1968 Convention as determined by Article 1 thereof.
3. The Court of Session shall have power—
- (a) to grant interim interdict under subsection (1)(c) of section 27 of the Civil Jurisdiction and Judgments Act 1982;
 - (b) to act as described in section 28 of that Act,
- in relation to proceedings which are to be commenced otherwise than in a Brussels or [State bound by the Lugano Convention].

CIVIL PROCEDURE RULES 1998 (SI 1998/3132)

Practice Direction 6B – Service out of the jurisdiction

3.1 Service out of the jurisdiction where permission is required

The claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where –

General Grounds

- (1) A claim is made for a remedy against a person domiciled within the jurisdiction.
 - (2) A claim is made for an injunction (GL) ordering the defendant to do or refrain from doing an act within the jurisdiction.
 - (3) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –
 - (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
 - (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.
 - (4) A claim is an additional claim under Part 20 and the person to be served is a necessary or proper party to the claim or additional claim.
- (4A) A claim is made against the defendant in reliance on one or more of paragraphs (2), (6) to (16), (19) or (21) and a further claim is made against the same defendant which arises out of the same or closely connected facts.

Claims for interim remedies

(5) A claim is made for an interim remedy under section 25(1) of the Civil Jurisdiction and Judgments Act 1982.

Claims in relation to contracts

(6) A claim is made in respect of a contract where the contract –

- (a) was made within the jurisdiction;
- (b) was made by or through an agent trading or residing within the jurisdiction;
- (c) is governed by English law; or
- (d) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract.

(7) A claim is made in respect of a breach of contract committed within the jurisdiction.

(8) A claim is made for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (6).

Claims in tort

(9) A claim is made in tort where –

- (a) damage was sustained, or will be sustained, within the jurisdiction; or
- (b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction.

Enforcement

(10) A claim is made to enforce any judgment or arbitral award.

Claims about property within the jurisdiction

(11) The subject matter of the claim relates wholly or principally to property within the jurisdiction, provided that nothing under this paragraph shall render justiciable the title to or the right to possession of immovable property outside England and Wales.

Claims about trusts etc

(12) A claim is made in respect of a trust which is created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, and which is governed by the law of England and Wales.

(12A) A claim is made in respect of a trust which is created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, and which provides that jurisdiction in respect of such a claim shall be conferred upon the courts of England and Wales.

(13) A claim is made for any remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled within the jurisdiction or whose estate includes assets within the jurisdiction.

(14) A probate claim or a claim for the rectification of a will.

(15) A claim is made against the defendant as constructive trustee, or as trustee of a resulting trust, where the claim arises out of acts committed or events occurring within the jurisdiction or relates to assets within the jurisdiction.

(16) A claim is made for restitution where –

- (a) the defendant's alleged liability arises out of acts committed within the jurisdiction; or

- (b) the enrichment is obtained within the jurisdiction; or
- (c) the claim is governed by the law of England and Wales.

Claims by HM Revenue and Customs

(17) A claim is made by the Commissioners for HM Revenue and Customs relating to duties or taxes against a defendant not domiciled in Scotland or Northern Ireland.

Claim for costs order in favour of or against third parties

(18) A claim is made by a party to proceedings for an order that the court exercise its power under section 51 of the Senior Courts Act 1981 to make a costs order in favour of or against a person who is not a party to those proceedings. (Rule 46.2 sets out the procedure where the court is considering whether to exercise its discretion to make a costs order in favour of or against a non-party.)

Admiralty claims

- (19) A claim is –
- (a) in the nature of salvage and any part of the services took place within the jurisdiction; or
 - (b) to enforce a claim under section 153, 154, 175 or 176A of the Merchant Shipping Act 1995.

Claims under various enactments

- (20) A claim is made –
- (a) under an enactment which allows proceedings to be brought and those proceedings are not covered by any of the other grounds referred to in this paragraph; or
 - (b) under the Directive of the Council of the European Communities dated 15 March 1976 No 76/308/EEC, where service is to be effected in a Member State of the European Union.

Claims for breach of confidence or misuse of private information

- (21) A claim is made for breach of confidence or misuse of private information where –
- (a) detriment was suffered, or will be suffered, within the jurisdiction; or
 - (b) detriment which has been, or will be, suffered results from an act committed, or likely to be committed, within the jurisdiction.

CIVIL JURISDICTION AND JUDGMENTS ORDER 2001
(SI 2001/3929)

Interpretation

2.—(1) In this Order—

‘the Act’ means the Civil Jurisdiction and Judgments Act 1982;

[‘the 2005 Agreement’ means the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;]

[‘the Regulation’ means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) as amended from

time to time and as applied by virtue of the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;]

‘Regulation State’ in any provision, in the application of that provision in relation to the Regulation, means a Member State.]

The definitions of ‘the 2005 Agreement’, ‘the Regulation’ and ‘Regulation State’ are omitted by SI 2019/479, reg 75(2).

The Regulation

3. Schedule 1 to this Order (which applies certain provisions of the Act with modifications for the purposes of the Regulation) shall have effect.

[The 2005 Agreement

3A. The Regulation shall have effect as regards Denmark in accordance with the 2005 Agreement.]

Articles 3 and 3A are omitted by SI 2019/479, reg 75(3), (4).

SCHEDULE 1 THE REGULATION

Schedule 1 is omitted by SI 2019/479, reg 75(5).

Interpretation

1.—(1) In this Schedule—

- ‘court’, without more, includes a tribunal;
- ‘judgment’ has the meaning given by [Article 2] of the Regulation;
- ‘maintenance order’ means a maintenance judgment within the meaning of the Regulation;
- ‘part of the United Kingdom’ means England and Wales, Scotland or Northern Ireland;
- ‘payer’, in relation to a maintenance order, means the person liable to make the payments for which the order provides;
- ‘prescribed’ means prescribed by rules of court.

Enforcement of judgments other than maintenance orders (section 4)

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

[(2) A judgment to be enforced under the Regulation shall for the purposes of its enforcement be of the same force and effect, the enforcing 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 enforcing court.]

[(2A) Where a judgment to be enforced under the Regulation would, if it had been given by a court in Northern Ireland, be enforced by the Enforcement of Judgments Office pursuant to the Judgments Enforcement (Northern Ireland) Order 1981, that judgment shall for the purposes of its enforcement be of the same force and effect, the Enforcement of Judgments Office 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 a court in Northern Ireland.]

(3) Sub-paragraph (2) is subject to [Articles 41(2) and 46], 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.

[...]

Appeals under [Articles 50 and 75C]

4.—(1) The single further appeal on a point of law referred to under [Articles 50 and 75C] in relation to the recognition or enforcement of a judgment other than a maintenance order lies—

(a) in England and Wales or Northern Ireland, to the Court of Appeal or to the House of Lords in accordance with Part II of the Administration of Justice Act 1969 (appeals direct from the High Court to the House of Lords);

(b) in Scotland, to the Inner House of the Court of Session.

(2) Paragraph (a) of sub-paragraph (1) has effect notwithstanding section 15(2) of the Administration of Justice Act 1969 (exclusion of direct appeal to the House of Lords in cases where no appeal to that House lies from a decision of the Court of Appeal).

(3) 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—

(a) in England and Wales, [to a county court in accordance with section 111A] of the Magistrates' Courts Act 1980;

(b) in Scotland, to the Inner House of the Court of Session;

(c) in Northern Ireland, to the Court of Appeal.

...

Allocation within United Kingdom of jurisdiction with respect to trusts and consumer contracts (section 10)

7.—(1) The provisions of this paragraph have effect for the purpose of allocating within the United Kingdom jurisdiction in certain proceedings in respect of which the Regulation confers jurisdiction on the courts of the United Kingdom generally and to which section 16 of the Act does not apply.

(2) Any proceedings which by virtue of [Article 7(6)] (trusts) are brought in the United Kingdom shall be brought in the courts of the part of the United Kingdom in which the trust is domiciled.

(3) Any proceedings which by virtue of the [Article 18(1)] (consumer contracts) are brought in the United Kingdom by a consumer on the ground that he is himself domiciled there shall be brought in the courts of the part of the United Kingdom in which he is domiciled.

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

8.—(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 the United Kingdom 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 53 and Annex I] shall be evidence, and in Scotland sufficient 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 41)

9.—(1) Subject to [Article 62] (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 the United Kingdom or in a particular part of, or place in, the United Kingdom or in a state other than a Regulation State.

(2) An individual is domiciled in the United Kingdom if and only if—

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

(3) Subject to sub-paragraph (5), an individual is domiciled in a particular part of the United Kingdom if and only if—

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

(4) An individual is domiciled in a particular place in the United Kingdom if and only if he—

- (a) is domiciled in the part of the United Kingdom in which that place is situated; and
- (b) is resident in that place.

(5) An individual who is domiciled in the United Kingdom but in whose case the requirements of sub-paragraph (3)(b) are not satisfied in relation to any particular part of the United Kingdom shall be treated as domiciled in the part of the United Kingdom in which he is resident.

(6) In the case of an individual who—

- (a) is resident in the United Kingdom, or in a particular part of the United Kingdom; and

(b) has been so resident for the last three months or more,

the requirements of sub-paragraph (2)(b) or, as the case may be, sub-paragraph (3) (b) shall be presumed to be fulfilled unless the contrary is proved.

(7) 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 24(2)] (section 43)

10.—(1) The following provisions of this paragraph determine where a company, legal person or association has its seat for the purposes of [Article 24(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 the United Kingdom if and only if—

(a) it was incorporated or formed under the law of a part of the United Kingdom; or

(b) its central management and control is exercised in the United Kingdom.

(3) Subject to sub-paragraph (4), a company, legal person or association has its seat in a Regulation State other than the United Kingdom 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 the United Kingdom if—

- (a) it has its seat in the United Kingdom 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 24(2)] as having its seat there.

Persons deemed to be domiciled in the United Kingdom for certain purposes (section 44)

11.—(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 establishment in the United Kingdom, is deemed for the purposes of the Regulation to be domiciled in the United Kingdom by virtue of—

- (a) [Article 11(2)] (insurers); or
- (b) [Article 17(2)] (suppliers of goods, services or credit to consumers), or
- (c) [Article 20(2)] (employers),

shall, for the purposes of those proceedings, be treated as so domiciled and as domiciled in the part of the United Kingdom in which the branch, agency or establishment in question is situated.

Domicile of trusts (section 45)

12.—(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 the United Kingdom if and only if it is by virtue of sub-paragraph (3) domiciled in a part of the United Kingdom.

(3) A trust is domiciled in a part of the United Kingdom if and only if the system of law of that part is the system of law with which the trust has its closest and most real connection.

LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS (SCOTLAND) REGULATIONS 2008 (SSI 2008/404)

Conflicts falling within Article 25(2) of Regulation (EC) No 864/2007

4. Notwithstanding Article 25(2) of Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), that Regulation shall apply in the case of conflicts between—

- (a) the laws of different parts of the United Kingdom; or
- (b) between the laws of one or more parts of the United Kingdom and Gibraltar,

as it applies in the case of conflicts between the laws of other countries.

Regulation 4 as amended by SI 2019/834:

[Application of Regulation (EC) No 864/2007]

4. [...] Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), [...] shall apply in the case of conflicts between—

- (a) the laws of different parts of the United Kingdom; or

(b) between the laws of one or more parts of the United Kingdom and Gibraltar,
as it applies in the case of conflicts between the laws of other countries

**LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (SCOTLAND)
REGULATIONS 2009
(SSI 2009/410)**

Conflicts falling within Article 22(2) of Regulation (EC) No 593/2008

4. Notwithstanding Article 22(2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), that Regulation shall, with the exception of Article 7 (insurance contracts), apply in the case of conflicts between—

- (a) the laws of different parts of the United Kingdom, or
- (b) the laws of one or more parts of the United Kingdom and Gibraltar,
as it applies in the case of conflicts between the laws of other countries.

Regulation 4 as amended by SI 2019/834:

[Application of Article 22(2) of Regulation (EC) No 593/2008]

4. [...] Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), [...] shall, with the exception of Article 7 (insurance contracts), apply in the case of conflicts between—

- (a) the laws of different parts of the United Kingdom, or
- (b) the laws of one or more parts of the United Kingdom and Gibraltar,
as it applies in the case of conflicts between the laws of other countries.

**PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION
OF CHILDREN (INTERNATIONAL OBLIGATIONS) (SCOTLAND)
REGULATIONS 2010
(SSI 2010/213)**

The following provisions are reproduced as amended by the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc) Regulations 2019 (SSI 2019/104).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010.

(2) These Regulations come into force on the day on which the Convention enters into force for the United Kingdom, which date will be notified in the London, Edinburgh and Belfast Gazettes.

(3) These Regulations extend to Scotland.

Interpretation

2. In these Regulations—

‘Children’s Hearing’ has the meaning given by section 93(1) of the Children (Scotland) Act 1995;

‘Contracting State’ means a state party to the Convention;

‘the Convention’ means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996;

[...]

‘local authority’ means a council constituted by section 2 of the Local Government etc (Scotland) Act 1994;

[...]

‘the Principal Reporter’ means the Principal Reporter within the meaning given in section 93(1) of the Children (Scotland) Act 1995;

‘public authority’ means a body whose functions are wholly or mainly of a public nature.

Power of court to recall sist under Article 8

3. (1) This regulation applies where—

(a) a court has exercised its power under Article 8 of the Convention to request an authority of another Contracting State to assume jurisdiction in relation to an application, and

(b) the court has sisted proceedings on the application, and

(c) Part 1 of the Family Law Act 1986 does not apply in relation to the application.

(2) The court may recall a sist granted in order for it to exercise its powers under Article 8 of the Convention, and withdraw any request made by it under that Article to an authority in another Contracting State to assume jurisdiction, if—

(a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the sist, or

(b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.

[...]

Principal Reporters: application to refer a child to Children’s Hearing

5.—(1) This regulation applies where—

(a) the Principal Reporter is obliged to refer a child to a Children’s Hearing under section 65(1) of the Children (Scotland) Act 1995; and

(b) the authorities of another Contracting State have jurisdiction in respect of the child under the Convention.

(2) The Principal Reporter must through the Central Authority in Scotland make an application to the competent authority of the Contracting State in exercise of his power under Article 9 of the Convention (request to competent authority of the Contracting State of the habitual residence of the child for authorisation to exercise jurisdiction).

[...]

Judicial authorities

7.—(1) The Court of Session is to have jurisdiction to entertain an application under Article 24 of the Convention for recognition, or non-recognition, of a measure taken in another Contracting State.

(2) But where the recognition or non-recognition of a measure is raised as an incidental question in another court, that court may determine the issue.

(3) The Court of Session is also to have jurisdiction—

(a) to register a measure taken in another Contracting State for enforcement under Article 26 of the Convention, and

(b) to entertain an application for a declarator—

(i) that a person has, or does not have, parental responsibility for a child by virtue of Article 16 of the Convention, or

(ii) as to the extent of a person’s parental responsibility for a child by virtue of that Article.

Central Authority in Scotland

8.—(1) The functions under the Convention of a Central Authority in Scotland are to be discharged by the Scottish Ministers.

(2) If a person outside the United Kingdom does not know to which Central Authority in the United Kingdom a communication should be addressed, the person may address it to the Lord Chancellor.

[...]

Power to request report on child's situation

11.—(1) This regulation applies where a Central Authority thinks it appropriate to provide a report on the situation of a child under Article 32(a) of the Convention.

(2) The Scottish Ministers may—

(a) request a written report on the situation of the child from a local authority in Scotland, or

(b) if a written report has been provided to a court in relation to the child, request a copy of the report from the court.

(3) A person in Scotland who receives a request for a report under this regulation must comply with the request as soon as reasonably practicable (but this is subject to Article 37 of the Convention).

Local authorities and Children's Hearings: placement of child in another Contracting State

12.—(1) This regulation applies if a local authority or Children's Hearing in Scotland is contemplating—

(a) placing a child in another Contracting State, within the meaning given by Article 33 of the Convention [...].

(2) This regulation applies if a Children's Hearing is contemplating—

(a) making a supervision requirement under section 70(3)(a) of the Children (Scotland) Act 1995 requiring a child to reside in another Contracting State, within the meaning given by Article 33 of the Convention [...].

(3) The local authority, or in the case of the Children's Hearing the Principal Reporter, whichever has jurisdiction under Articles 5 to 10 of the Convention [...], as the case may be ('the authority')—

(a) must provide through the Central Authority in Scotland a report to the Central Authority, or other competent authority, of the other Contracting State in accordance with Article 33(1) of the Convention, if the authority is exercising jurisdiction under the Convention [...].

Power to respond to a request under Article 34

13. A public authority in Scotland may provide information in response to a request communicated to it by the Central Authority under Article 34 of the Convention.

**ADOPTION (RECOGNITION OF OVERSEAS ADOPTIONS) ORDER 2013
(SI 2013/1801)****Citation and commencement**

1. This Order may be cited as the Adoption (Recognition of Overseas Adoptions) Order 2013 and comes into force on 3rd January 2014.

Overseas adoptions

2.—(1) An adoption of a child is specified as an overseas adoption if it is an adoption effected under the law of a country or territory listed in the Schedule after the coming into force of this Order and is not a Convention adoption(3).

(2) In this Article "law" does not include customary or common law.

Evidence of an overseas adoption

3.—(1) The following documents may be provided as evidence that an overseas adoption has been effected—

(a) a certified copy of an entry made, in accordance with the law of the country or territory concerned, in a public register relating to the recording of adoptions and showing that the adoption has been effected; or

(b) a certificate that the adoption has been effected, signed or purporting to be signed by a person authorised by the law of the country or territory concerned to sign such a certificate, or a certified copy of such a certificate.

(2) Where a document produced by virtue of paragraph (1) is not in English, the Registrar General may require the production of an English translation of the document before being satisfied of the matters specified in paragraph 3 of Schedule 1 to the Adoption and Children Act 2002.

(3) Nothing in this Article may be construed as precluding proof, in accordance with the Evidence (Foreign, Dominion and Colonial Documents) Act 1933, or the Oaths and Evidence (Overseas Authorities and Countries) Act 1963, or otherwise, that an overseas adoption has been effected.

Revocations and savings provision

4.—(1) The Adoption (Designation of Overseas Adoptions) Order 1973 ('the 1973 Order') and the Adoption (Designation of Overseas Adoptions) (Variation) Order 1993 are revoked.

(2) The revocations do not affect any adoption designated as an overseas adoption by virtue of the 1973 Order prior to the coming into force of this Order.

Article 2(1)

SCHEDULE

Albania	Italy
Andorra	Kazakhstan
Armenia	Kenya
Australia	Latvia
Austria	Lesotho
Azerbaijan	Liechtenstein
Belarus	Lithuania
Belgium	Luxembourg
Belize	The Former Yugoslav Republic of Macedonia
Bolivia	Madagascar
Brazil	Mali
Bulgaria	Malta
Burkina Faso	Mauritius
Burundi	Mexico
Canada	The Republic of Moldova
Cape Verde	Monaco
Chile	Mongolia
The People's Republic of China	Montenegro
Colombia	The Netherlands (including the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba)
Costa Rica	New Zealand
Cuba	Norway
The Republic of Cyprus	Panama
Czech Republic	Paraguay
Denmark (including the Faroe Islands and Greenland)	Peru
Dominican Republic	Philippines
Ecuador	Poland
El Salvador	Portugal
Estonia	Romania
Fiji	Rwanda
Finland	San Marino
France	Senegal
Georgia	Seychelles
Germany	Slovakia
Greece	Slovenia
Guinea	South Africa
Hungary	Spain
Iceland	Sri Lanka
India	Swaziland
The Republic of Ireland	Sweden
Israel	

Switzerland
 Turkey
 The United States of America
 Thailand

Togo
 Uruguay
 Venezuela
 Vietnam

**MARRIAGE (SAME SEX COUPLES) (JURISDICTION AND RECOGNITION OF JUDGMENTS) (SCOTLAND) REGULATIONS 2014
 (SSI 2014/362)**

These Regulations are revoked by the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc) Regulations 2019 (SSI 2019/104), subject to the saving and transitional provisions in reg 6.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2014 and come into force on 16th December 2014.

(2) These Regulations extend to Scotland only.

(3) In these Regulations ‘member State’ means a member State of the European Union.

**PART 1
 JURISDICTION**

Jurisdiction

2.—(1) In this Part—

‘relevant foreign decree’ means a decree of divorce of, nullity of the marriage of, or judicial separation of a married same sex couple granted outwith a member State.

(2) The courts in Scotland have jurisdiction in proceedings for the declarator of recognition, or non-recognition, of a relevant foreign decree and in proceedings for the divorce of, declarator of nullity of the marriage of, or judicial separation of a married same sex couple where—

- (a) both spouses are habitually resident in Scotland;
- (b) both spouses were last habitually resident in Scotland and one of the spouses continues to reside there;
- (c) the defender is habitually resident in Scotland;
- (d) the pursuer is habitually resident in Scotland and has resided there for at least one year immediately preceding the date on which the action is begun;
- (e) the pursuer is domiciled and habitually resident in Scotland and has resided there for at least six months immediately preceding the date on which the action is begun; or
- (f) both spouses are domiciled in Scotland.

**PART 2
 RECOGNITION AND REFUSAL OF RECOGNITION OF A JUDGMENT OF A COURT OF A MEMBER STATE**

Interpretation and application

3.—(1) In this Part ‘judgment’ means a judgment of a court of a member State other than the United Kingdom which orders the divorce of, annulment of the marriage of, or the judicial separation of a married same sex couple.

(2) In paragraph (1) a ‘court of a member State’ means any authority, whether judicial or administrative, in a member State with jurisdiction in those matters falling within the scope of these Regulations.

(3) This Part applies to all judgments even if the date of the judgment is earlier than the date on which paragraph 2 of Schedule 1B to the Domicile and Matrimonial Proceedings Act 1973 and these Regulations come into force.

Recognition of a judgment

4.—(1) Subject to regulation 5, where a judgment is (or has been) given in respect of a marriage of a same sex couple, that judgment is to be recognised.

(2) Any interested party may apply to either the Court of Session or the sheriff court for a declarator of recognition or non-recognition of a judgment.

(3) Where the recognition of a judgment is raised as an incidental issue in proceedings before a court, that court may determine the issue.

Refusal of recognition of judgment

5.—(1) Recognition of the validity of a judgment may be refused if the judgment was obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the marriage—

(a) previously given by a court of civil jurisdiction in Scotland; or

(b) previously given by a court elsewhere and recognised or entitled to be recognised in Scotland.

(2) Recognition of the validity of a judgment may be refused if the judgment was obtained at a time when the law of Scotland did not recognise marriages of same sex couples.

(3) Paragraph (2) does not prevent the recognition of a judgment if, at the time the judgment was obtained, the marriage would have been treated as a subsisting civil partnership according to the law of Scotland.

(4) Recognition of the validity of a judgment may be refused if—

(a) in the case of a judgment obtained by means of proceedings, it was obtained—

(i) without such steps having been taken for giving notice of the proceedings to a spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or

(ii) without a spouse having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, that spouse should reasonably have been given; or

(b) in the case of a judgment obtained otherwise than by means of proceedings, there is no official document certifying the judgment is effective under the law of the country in which it was obtained; or

(c) in either case, recognition of the judgment would be manifestly contrary to public policy.

(5) In this regulation 'official', in relation to a document certifying that a judgment is effective under the law of any country, means issued by a person or a body appointed or recognised for the purpose under that law.

Jurisdiction and review

6.—(1) The court may not review the jurisdiction of the court which issued the judgment.

(2) A judgment may not be reviewed as to its substance.

Differences in applicable law

7. The recognition of a judgment may not be refused because the law of Scotland would not allow divorce, declarator of nullity or judicial separation on the same facts.

Sist of proceedings

8. Where recognition is sought of a judgment given in a member State and an appeal against that judgment has been lodged in that member State, the court may sist the proceedings.

**CIVIL JURISDICTION AND JUDGMENTS (HAGUE CONVENTION ON
CHOICE OF COURT AGREEMENTS 2005) (EU EXIT) REGULATIONS 2018
(SI 2018/1124)**

These Regulations are reproduced as prospectively amended by the Private International Law (Implementation of Agreements) Bill 2020. The prospective amendments are indicated by italic type.

**PART 1
INTRODUCTION**

Citation and commencement

These Regulations may be cited as the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018 and come into force on exit day.

Interpretation

2. In these Regulations—

‘the 2005 Hague Convention’ means the Convention on Choice of Court Agreements concluded on 30 June 2005 at The Hague;

‘exclusive choice of court agreement’ has the meaning given by Article 3;

‘the section 4 rights’ has the meaning given by regulation 3; and a reference to an Article is a reference to an Article of the 2005 Hague Convention.

**PART 2
THE RIGHTS ETC DERIVING FROM THE 2005 HAGUE CONVENTION**

Rights etc deriving from the 2005 Hague Convention

3. [...]

(3) In these Regulations, the section 4 rights are the rights, powers, liabilities, obligations, restrictions, remedies and procedures which—

(a) are derived from the 2005 Hague Convention, and

(b) continue to be recognised in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (saving for rights etc. under s 2(1) of the ECA).

(4) The Articles of, and the declarations under, the 2005 Hague Convention from which the section 4 rights are derived are—

(a) Articles 1 to 18, 23, 25(1) and (3) and 26;

(b) any declaration made by the EU under Article 21 which has effect immediately before [*IP completion day*].

Choice of court agreements concluded before [*IP completion day*]

4.—(1) This regulation applies in the case of an exclusive choice of court agreement which is concluded—

(a) after the 2005 Hague Convention entered into force for the United Kingdom by virtue of being a member State, but

(b) before [*IP completion day*].

(2) The section 4 rights [*on and after IP completion day*] have effect as regards the agreement as if—

(a) the United Kingdom remained without interruption a State bound by the 2005 Hague Convention on and after [*IP completion day*], and

(b) Article 26(6) operated as it would have operated if the United Kingdom had also continued to be a member State on and after [*IP completion day*].

(3) Notwithstanding the effect that Article 26(2) to (5) would produce if the United Kingdom were a State bound by the 2005 Hague Convention, the section 4 rights do not have effect as regards the agreement if and to the extent that their

having effect would conflict with an obligation of the United Kingdom under another treaty.

Regulations 5 and 6 are omitted.

PART 3
MODIFICATIONS AND AMENDMENT OF PRIMARY AND SECONDARY
LEGISLATION

Primary and subordinate legislation referring to the 2005 Hague Convention

7.—(1) Provision made in relation to the 2005 Hague Convention by—

- (a) the Civil Jurisdiction and Judgments Act 1982,
- (b) the Civil Procedure Rules 1998, and
- (c) the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) Regulations 2015,

also applies in the case of an exclusive choice of court agreement to which regulation 4 [...] applies.

(2) Where the provision so applies in a particular case, it has effect as if the provision were made in relation to the section 4 rights, as the section 4 rights have effect in that case (see [...] regulation 4(2) and (3) [...]).

[...]

PART 4
AMENDMENT OF RETAINED DIRECT EU LEGISLATION

Council Decision of 26 February 2009 (2009/397/EC)

9. Council Decision of 26 February 2009 on the signing on behalf of the European Community of the Convention on Choice of Court Agreements (2009/397/EC) is revoked.

Council Decision of 4 December 2014 (2014/887/EU)

10. Council Decision of 4 December 2014 on the approval, on behalf of the European Union, of the Convention on Choice of Court Agreements (2014/887/EU) is revoked.

**INTERNATIONAL RECOVERY OF MAINTENANCE (HAGUE
CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD
SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE 2007) (EU
EXIT) REGULATIONS 2018
(SI 2018/1125)**

These Regulations are reproduced as prospectively amended by the Private International Law (Implementation of Agreements) Bill 2020. The prospective amendments are indicated by italic type.

PART 1
INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018 and come into force on exit day.

Interpretation

2. In these Regulations—

- (a) ‘the 2007 Hague Convention’ means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague;

- (b) ‘maintenance obligation’ means an obligation to pay maintenance under a maintenance decision within the meaning of Article 19, or a maintenance arrangement within the meaning of Article 30;
- (c) ‘the relevant Central Authority in the United Kingdom’ means—
- (i) for England and Wales, the Lord Chancellor;
 - (ii) for Scotland, the Scottish Ministers;
 - (iii) for Northern Ireland, the Department of Justice;
- (d) ‘the relevant competent authority in the United Kingdom’ means—
- (i) for England and Wales, the family court;
 - (ii) for Scotland, the sheriff court;
 - (iii) for Northern Ireland, a magistrates’ court;
- (e) ‘request’ means, as the context requires—
- (i) an application in a category referred to in Article 10;
 - (ii) a direct request within the meaning of Article 37; or
 - (iii) a request for specific measures within the meaning of Article 7;
- (f) ‘the section 4 rights’ has the meaning given by regulation 3, and a reference to an Article is a reference to an Article of the 2007 Hague Convention.

PART 2

THE RIGHTS ETC DERIVING FROM THE 2007 HAGUE CONVENTION

Rights etc deriving from the 2007 Hague Convention

3. [...]

(3) In these Regulations, the section 4 rights are the rights, powers, liabilities, obligations, restrictions, remedies and procedures which—

- (a) are derived from the 2007 Hague Convention, and
- (b) continue to be recognised in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018.

(4) The Articles of, and the declarations under, the 2007 Hague Convention from which the section 4 rights are derived are—

- (a) Articles 2, 3, 5 to 15, 17, 18, 19 to 23, 25 to 34, 36, 37 to 40, 42 to 46, 48 to 53, and 56;
- (b) [*any declaration made by the EU relating to Article 2(3) regarding the extension of Chapters II and III of the 2007 Hague Convention to spousal support which has effect immediately before IP completion day*].

Payments falling due under maintenance obligations towards a person under 21 years of age before the 2007 Hague Convention again enters into force for the United Kingdom

4.—(1) This regulation applies in relation to payments under maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years, where such payments fall due [*before IP completion day*].

(2) Subject to paragraph (3), [...] a creditor in relation to an obligation mentioned in paragraph (1) may seek enforcement of any payment falling due under that obligation [...].

(3) Where, before [*IP completion day*], a maintenance obligation mentioned in paragraph (1) was governed by the rules of the EU, such that the rules of the 2007 Hague Convention did not apply by virtue of Article 51(4), paragraph (2) shall not apply to any payment falling due under that maintenance obligation before [*IP completion day*].

(4) In this regulation, ‘creditor’ has the meaning given by Article 3 (and, where the context so requires, as extended by Article 36).

Maintenance obligations and requests before [*IP completion day*]

5.—(1) This regulation applies in relation to maintenance obligations and requests, other than those to which regulation 4 applies, where —

- (a) payments fall due;
 - (b) an application, or request for specific measures, is received by the relevant Central Authority in the United Kingdom; or
 - (c) a direct request is received by the relevant competent authority in the United Kingdom,
- after the 2007 Hague Convention entered into force for the United Kingdom by virtue of being a member State, but before *[IP completion day]*.
- (2) The section 4 rights have effect *[on and after IP completion day]* as if—
- (a) the United Kingdom were a State bound by the 2007 Hague Convention on and after *[IP completion day]*, and
 - (b) Article 51(4) operated as it would have operated if the United Kingdom had also continued to be a member State.
- (3) Notwithstanding the effect that Articles 48 to 50 and 51(1) to (3) would produce if the United Kingdom were a State bound by the 2007 Hague Convention, the section 4 rights do not have effect as regards the maintenance obligation or request if and to the extent that their having effect would conflict with a treaty obligation of the United Kingdom.

Regulations 6 and 7 are omitted.

PART 4 AMENDMENT OF RETAINED DIRECT EU LEGISLATION

Council Decision of 31 March 2011 (2011/220/EU)

10. Council Decision of 31 March 2011 on the signing, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2011/220/EU) is revoked.

Council Decision of 9 June 2011 (2011/432/EU)

11. Council Decision of 9 June 2011 on the approval, on behalf of the European Union, of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2011/432/EU) is revoked.

JURISDICTION AND JUDGMENTS (FAMILY, CIVIL PARTNERSHIP AND MARRIAGE (SAME SEX COUPLES)) (EU EXIT) (SCOTLAND) (AMENDMENT ETC) REGULATIONS 2019 (SSI 2019/104)

Revocation of Council Regulation No 2201/2003

3. Council Regulation No 2201/2003 is revoked.

Saving and transitional provisions

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

- (a) proceedings before a court in a Member State seised before these Regulations come into force in reliance upon the provisions of Chapter II (jurisdiction) of Council Regulation No 2201/2003,
- (b) applications, requests for assistance or specific measures, where the application or request is received by the Scottish Ministers as the relevant Central Authority or where the competent authority is seised before these Regulations come into force, in accordance with Chapter III (recognition and enforcement) or Chapter IV (cooperation between Central Authorities in matters of parental responsibility) of Council Regulation No 2201/2003,
- (c) proceedings commenced before these Regulations come into force pursuant to the jurisdiction provisions of Part 1 of—

- (i) the Civil Partnership (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2005, or
 - (ii) the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2014,
- (d) proceedings commenced before these Regulations come into force in accordance with the recognition and refusal of recognition provisions of Part 2 of—
- (i) the Civil Partnership (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2005, or
 - (ii) the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2014.
- (2) For the purposes of sub-paragraphs (1)(a) and (b) of this regulation—
- (a) a court is seised—
 - (i) 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
 - (ii) 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, and
 - (b) references to ‘Member State’ in Council Regulation No 2201/2003 and any implementing legislation are to be read as including the United Kingdom.

**CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT) (EU EXIT)
REGULATIONS 2019
(SI 2019/479)**

**PART 4
TREATY RIGHTS AND OBLIGATIONS**

The 1968 Convention, the Lugano Conventions and the EC-Denmark Agreement

82.—(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—

- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
- (b) are derived from—
 - (i) the Brussels Conventions;
 - (ii) the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the member States of the European Communities and the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation, signed by the member States on 16 September 1988;
 - (iii) the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, of 19 October 2005; or
 - (iv) the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark, signed on behalf of the Community on 30 October 2007,

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) on exit day.

- (2) In this regulation, ‘the Brussels Conventions’ means—
 - (i) the Convention on jurisdiction and the enforcement of judgments in

civil and commercial matters (including the Protocol annexed to that Convention), signed at Brussels on 27 September 1968;

(ii) the Protocol on the interpretation of the 1968 Convention by the European Court, signed at Luxembourg on 3 June 1971;

(iii) the Convention on the accession to the 1968 Convention and the 1971 Protocol of Denmark, the Republic of Ireland and the United Kingdom, signed at Luxembourg on 9 October 1968;

(iv) the Convention on the accession of the Hellenic Republic to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention, signed at Luxembourg on 25 October 1982;

(v) the Convention on the Accession of the Kingdom of Spain and the Portuguese Republic to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention and the 1982 Accession Convention, signed at Donostia, San Sebastián on 26 May 1989; and

(vi) the Convention on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention, the 1982 Accession Convention and the 1989 Accession Convention, signed at Brussels on 29 November 1996.

PART 5

REVOCATION OF RETAINED EU LEGISLATION

Council Decision of 28 May 2001

83. Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC) is revoked.

Council Regulation (EC) No 44/2001

84. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is revoked.

Council Decision of 20 September 2005 (2005/790/EC)

85. Council Decision of 20 September 2005 on the signing, on behalf of the Community, of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2005/790/EC) is revoked.

Council Decision of 27 April 2006 (2006/325/EC)

86. Council Decision of 27 April 2006 concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2006/325/EC) is revoked.

Council Decision of 15 October 2007 (2007/712/EC)

87. Council Decision of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2007/712/EC) is revoked.

Council Decision of 27 November 2008 (2009/430/EC)

88. Council Decision of 27 November 2008 concerning the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2009/430/EC) is revoked.

Regulation (EU) No 1215/2012

89. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) is revoked.

Regulation (EU) No 542/2014

90. Regulation (EU) No 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice is revoked.

Commission Delegated Regulation (EU) No 2015/281

91. Commission Delegated Regulation (EU) No 542/2014 of 26 November 2014 replacing Annexes I and II of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is revoked.

PART 6
SAVINGS

Savings relating to jurisdiction, recognition and enforcement

92.—(1) Subject to paragraph (5) and to regulation 93, this regulation applies—

(a) where one of the relevant instruments applies immediately before exit day to determine questions relating to the jurisdiction of a court in any part of the United Kingdom to hear proceedings of which that court was seised before exit day and which are not concluded before exit day;

(b) in relation to recognition or enforcement by a court in any part of the United Kingdom of—

(i) a judgment or decision given in proceedings of which a court in a State bound by a relevant instrument was seised before exit day;

(ii) a court settlement concluded, or authentic instrument registered, before exit day in a State bound by a relevant instrument, where the question of recognition or enforcement has not arisen for consideration by the first mentioned court before exit day, or having so arisen, that court has not concluded its consideration before that day.

(2) The relevant instruments referred to in paragraph (1) are—

(a) the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters, signed at Brussels on 27 September 1968;

(b) the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, between the member States of the European Communities and the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation, signed by the member States on 16 September 1988;

(c) the Agreement between the European Community and the Kingdom of Denmark on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, of 19 October 2005;

(d) the 2007 Lugano Convention;

(e) Regulation (EC) No 44/2001;

(f) Regulation (EU) No 1215/2012.

(3) Notwithstanding the provision made by these Regulations, and subject to regulation 93, on and after exit day—

(a) the relevant instruments, as they are incorporated or saved by sections 3 and 4 of the European Union (Withdrawal) Act 2018, continue to have effect in relation to questions of jurisdiction, or recognition or enforcement, mentioned in paragraph (1) as if those instruments had not been revoked by these Regulations and the United Kingdom remained a member State;

(b) EU-derived domestic legislation relating to the relevant instruments, as it is saved by section 2 of the European Union (Withdrawal) Act 2018, continues to have effect in relation to questions of jurisdiction, or recognition or enforcement, mentioned in paragraph (1) as if the provision made by these Regulations in respect of that legislation had not been made and the United Kingdom remained a member State.

(4) In this regulation, a reference to ‘recognition’ includes non-recognition if the context so requires.

(5) This regulation does not apply to a maintenance obligation or request to which the International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018(1) apply.

Modifications of relevant instruments and EU-derived domestic legislation saved by regulation 92

93.—(1) In any case where regulation 92 applies, the relevant instruments and EU-derived domestic legislation saved by regulation 92 apply with the following modifications.

(2) Where before exit day a court in any part of the United Kingdom (the UK court) was seised of proceedings to which a relevant instrument applies, and a court in a State bound by that relevant instrument is subsequently seised of proceedings involving the same cause of action and between the same parties, the UK court may after exit day decline jurisdiction if, and only if, it considers that it would be unjust not to do so.

(3) If before exit day a court in any part of the United Kingdom was seised of proceedings against a defendant domiciled in a State bound by a relevant instrument, and it has not been possible to transmit the document instituting the proceedings in accordance with Regulation (EC) No 1393/2007 by reason of the exit of the United Kingdom from the European Union, then, if the defendant does not appear before the court, the court may apply whichever of the following provisions of that relevant instrument listed below as appears just—

- (a) Article 26(2) or (4) of Regulation (EC) No 44/2001;
- (b) Article 26(2) or (4) of the 2007 Lugano Convention;
- (c) Article 28(2) or (4) of Regulation (EU) No 1215/2012.

(4) Where regulation 92(1)(b) applies, any obligation to provide or serve a certificate under any of the following provisions does not apply—

- (a) Articles 54, 57 and 58 of Regulation (EC) No 44/2001;
- (b) Articles 54, 57 and 58 of the 2007 Lugano Convention;
- (c) Articles 53 and 60 of Regulation (EU) No 1215/2012.

(5) In this regulation, ‘Regulation (EC) No 1393/2007’ means Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

(6) In this regulation, references to ‘defendant’ include ‘defender’.

...

Interpretation of this Part

95.—(1) In this Part—

‘relevant instrument’ means an instrument mentioned in paragraph (2) of regulation 92;

‘Regulation (EU) No 1215/2012’ means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, including as applied by virtue of the Agreement between the European Community and the Kingdom of Denmark on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, of 19 October 2005;

‘Regulation (EC) No 44/2001’ means Council Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, including as applied by virtue of the Agreement between the European Community and the Kingdom of Denmark on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, of 19 October 2005;

‘the 2007 Lugano Convention’ means the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark, signed on behalf of the Community on 30 October 2007.

(2) In this Part, a court shall be deemed to be 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 (being the first authority receiving the document to be served), 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) In paragraph (2), references to ‘applicant’ include ‘claimant’ or ‘pursuer’, and references to ‘respondent’ include ‘defendant’ or ‘defender’.

(4) Nothing in this Part shall be interpreted as saving any obligation upon the United Kingdom under any of the relevant instruments to notify the Depository or the European Commission, as the case may be, of any matter, or update any such notification after exit day.

JURISDICTION AND JUDGMENTS (FAMILY) (AMENDMENT ETC) (EU EXIT) REGULATIONS 2019 (SI 2019/519)

Revocation of Council Regulation No 4/2009

4. Council Regulation No 4/2009 is revoked.

Saving and transitional provisions

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

(a) proceedings before a court in a Member State seised before exit day in reliance upon—

(i) the provisions of Chapter II (jurisdiction) of Council Regulation No 2201/2003, or

(ii) the provisions of Chapter II (jurisdiction) of Council Regulation No 4/2009;

(b) proceedings before a court seised in reliance upon a choice of court agreement, whether made before or after exit day, in accordance with Article 4 of Council Regulation No 4/2009;

(c) payments of maintenance which fall due before exit day or applications, requests for assistance or specific measures, where the application or request is received by the relevant Central Authority or where the relevant competent authority is seised before exit day, in accordance with—

(i) Chapter III (recognition and enforcement) or Chapter IV (cooperation between Central Authorities in matters of parental responsibility) of Council Regulation No 2201/2003, or

(ii) Chapter IV (recognition and enforcement), Chapter VI (court settlements and authentic instruments), Chapter VII (cooperation between Central Authorities) or Chapter VIII (public bodies) of Council Regulation (EC) 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 paragraph (1), 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 the United Kingdom.

PART III

EU MATERIALS

CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

OJ 2008 C115/47

PART THREE: UNION POLICIES AND INTERNAL ACTIONS; TITLE V: AREA OF FREEDOM, SECURITY AND JUSTICE

CHAPTER 3: JUDICIAL COOPERATION IN CIVIL MATTERS

Article 81 (ex Article 65 TEC)

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

- (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;
- (b) the cross-border service of judicial and extrajudicial documents;
- (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
- (d) cooperation in the taking of evidence;
- (e) effective access to justice;
- (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
- (g) the development of alternative methods of dispute settlement;
- (h) support for the training of the judiciary and judicial staff.

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.

**CONSOLIDATED VERSIONS OF THE TREATY ON EUROPEAN UNION
AND THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION:
PROTOCOLS—PROTOCOL (NO 21) ON THE POSITION OF THE UNITED
KINGDOM AND IRELAND IN RESPECT OF THE AREA OF FREEDOM,
SECURITY AND JUSTICE**

Official Journal C 115, 09/05/2008 p 295

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the Protocol on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union:

Article 1

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for decisions of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to the United Kingdom or Ireland.

Article 3

1. The United Kingdom or Ireland may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so.

The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for decisions of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption.

Measures adopted pursuant to Article 70 of the Treaty on the Functioning of the European Union shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Title V of Part Three of that Treaty.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.

Article 4

The United Kingdom or Ireland may at any time after the adoption of a measure by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article 331(1) of the Treaty on the Functioning of the European Union shall apply *mutatis mutandis*.

Article 4a

1. The provisions of this Protocol apply for the United Kingdom and Ireland also to measures proposed or adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union amending an existing measure by which they are bound.

2. However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of the United Kingdom or Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge them to make a notification under Article 3 or 4. For the purposes of Article 3, a further period of two months starts to run as from the date of such determination by the Council.

If at the expiry of that period of two months from the Council's determination the United Kingdom or Ireland has not made a notification under Article 3 or Article 4, the existing measure shall no longer be binding upon or applicable to it, unless the Member State concerned has made a notification under Article 4 before the entry into force of the amending measure. This shall take effect from the date of entry into force of the amending measure or of expiry of the period of two months, whichever is the later.

For the purpose of this paragraph, the Council shall, after a full discussion of the matter, act by a qualified majority of its members representing the Member States participating or having participated in the adoption of the amending measure. A qualified majority of the Council shall be defined in accordance with Article 238(3) (a) of the Treaty on the Functioning of the European Union.

3. The Council, acting by a qualified majority on a proposal from the Commission, may determine that the United Kingdom or Ireland shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure.

4. This Article shall be without prejudice to Article 4.

Article 5

A Member State which is not bound by a measure adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union shall bear no financial consequences of that measure other than administrative costs entailed for the institutions, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the relevant provisions of the Treaties shall apply to that State in relation to that measure.

Article 6a

The United Kingdom and Ireland shall not be bound by the rules laid down on the

basis of Article 16 of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of that Treaty where the United Kingdom and Ireland are not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16.

Article 7

Articles 3, 4 and 4a shall be without prejudice to the Protocol on the Schengen acquis integrated into the framework of the European Union.

Article 8

Ireland may notify the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, the normal treaty provisions will apply to Ireland.

Article 9

With regard to Ireland, this Protocol shall not apply to Article 75 of the Treaty on the Functioning of the European Union.

**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, REPEALING
REGULATION (EC) NO 1347/2000 ('BRUSSELS II BIS')**

This Regulation is revoked by the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc) Regulations 2019 (SSI 2019/104).

Official Journal L 338, 23/12/2003 p 1

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Whereas:

(1) The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) The Tampere European Council endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area, and identified visiting rights as a priority.

(3) Council Regulation (EC) No 1347/2000 sets out rules on jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility for the children of both spouses rendered on the occasion of the matrimonial proceedings. The content of this Regulation was substantially taken over from the Convention of 28 May 1998 on the same subject matter.

(4) On 3 July 2000 France presented an initiative for a Council Regulation on the mutual enforcement of judgments on rights of access to children.

(5) In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.

(6) Since the application of the rules on parental responsibility often arises in the context of matrimonial proceedings, it is more appropriate to have a single instrument for matters of divorce and parental responsibility.

(7) The scope of this Regulation covers civil matters, whatever the nature of the court or tribunal.

(8) As regards judgments on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.

(9) As regards the property of the child, this Regulation should apply only to measures for the protection of the child, i.e. (i) the designation and functions of a person or body having charge of the child's property, representing or assisting the child, and (ii) the administration, conservation or disposal of the child's property. In this context, this Regulation should, for instance, apply in cases where the parents are in dispute as regards the administration of the child's property. Measures relating to the child's property which do not concern the protection of the child should continue to be governed by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

(10) This Regulation is not intended to apply to matters relating to social security, public measures of a general nature in matters of education or health or to decisions on the right of asylum and on immigration. In addition it does not apply to the establishment of parenthood, since this is a different matter from the attribution of parental responsibility, nor to other questions linked to the status of persons. Moreover, it does not apply to measures taken as a result of criminal offences committed by children.

(11) Maintenance obligations are excluded from the scope of this Regulation as these are already covered by Council Regulation No 44/2001. The courts having jurisdiction under this Regulation will generally have jurisdiction to rule on maintenance obligations by application of Article 5(2) of Council Regulation No 44/2001.

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

(13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court.

(14) This Regulation should have effect without prejudice to the application of public international law concerning diplomatic immunities. Where jurisdiction under this Regulation cannot be exercised by reason of the existence of diplomatic immunity in accordance with international law, jurisdiction should be exercised in accordance with national law in a Member State in which the person concerned does not enjoy such immunity.

(15) Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters should apply to the service of documents in proceedings instituted pursuant to this Regulation.

(16) This Regulation should not prevent the courts of a Member State from

taking provisional, including protective measures, in urgent cases, with regard to persons or property situated in that State.

(17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.

(18) Where a court has decided not to return a child on the basis of Article 13 of the 1980 Hague Convention, it should inform the court having jurisdiction or central authority in the Member State where the child was habitually resident prior to the wrongful removal or retention. Unless the court in the latter Member State has been seised, this court or the central authority should notify the parties. This obligation should not prevent the central authority from also notifying the relevant public authorities in accordance with national law.

(19) The hearing of the child plays an important role in the application of this Regulation, although this instrument is not intended to modify national procedures applicable.

(20) The hearing of a child in another Member State may take place under the arrangements laid down in Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

(21) The recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.

(22) Authentic instruments and agreements between parties that are enforceable in one Member State should be treated as equivalent to 'judgments' for the purpose of the application of the rules on recognition and enforcement.

(23) The Tampere European Council considered in its conclusions (point 34) that judgments in the field of family litigation should be 'automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement'. This is why judgments on rights of access and judgments on return that have been certified in the Member State of origin in accordance with the provisions of this Regulation should be recognised and enforceable in all other Member States without any further procedure being required. Arrangements for the enforcement of such judgments continue to be governed by national law.

(24) The certificate issued to facilitate enforcement of the judgment should not be subject to appeal. It should be rectified only where there is a material error, i.e. where it does not correctly reflect the judgment.

(25) Central authorities should cooperate both in general matter and in specific cases, including for purposes of promoting the amicable resolution of family disputes, in matters of parental responsibility. To this end central authorities shall participate in the European Judicial Network in civil and commercial matters created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters.

(26) The Commission should make publicly available and update the lists of courts and redress procedures communicated by the Member States.

(27) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(28) This Regulation replaces Regulation (EC) No 1347/2000 which is consequently repealed.

(29) For the proper functioning of this Regulation, the Commission should review its application and propose such amendments as may appear necessary.

(30) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.

(31) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation and is therefore not bound by it nor subject to its application.

(32) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(33) This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THE PRESENT REGULATION:

CHAPTER I SCOPE AND DEFINITIONS

Article 1. Scope

1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

- (a) divorce, legal separation or marriage annulment;
- (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

- (a) rights of custody and rights of access;
- (b) guardianship, curatorship and similar institutions;
- (c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- (d) the placement of the child in a foster family or in institutional care;
- (e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property.

3. This Regulation shall not apply to:

- (a) the establishment or contesting of a parent-child relationship;
- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- (c) the name and forenames of the child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) measures taken as a result of criminal offences committed by children.

Article 2. Definitions

For the purposes of this Regulation:

1. the term 'court' shall cover all the authorities in the Member States with

jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;

2. the term 'judge' shall mean the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation;

3. the term 'Member State' shall mean all Member States with the exception of Denmark;

4. the term 'judgment' shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision;

5. the term 'Member State of origin' shall mean the Member State where the judgment to be enforced was issued;

6. the term 'Member State of enforcement' shall mean the Member State where enforcement of the judgment is sought;

7. the term 'parental responsibility' shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;

8. the term 'holder of parental responsibility' shall mean any person having parental responsibility over a child;

9. the term 'rights of custody' shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;

10. the term 'rights of access' shall include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time;

11. the term 'wrongful removal or retention' shall mean a child's removal or retention where:

(a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention; and

(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.

CHAPTER II JURISDICTION

Section 1

Divorce, legal separation and marriage annulment

Article 3. General jurisdiction

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

– the spouses are habitually resident, or

– the spouses were last habitually resident, insofar as one of them still resides there, or

– the respondent is habitually resident, or

– in the event of a joint application, either of the spouses is habitually resident, or

– the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or

– the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her ‘domicile’ there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the ‘domicile’ of both spouses.

2. For the purpose of this Regulation, ‘domicile’ shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

Article 4. Counterclaim

The court in which proceedings are pending on the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as the latter comes within the scope of this Regulation.

Article 5. Conversion of legal separation into divorce

Without prejudice to Article 3, a court of a Member State that has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides.

Article 6. Exclusive nature of jurisdiction under Articles 3, 4 and 5

A spouse who:

(a) is habitually resident in the territory of a Member State; or

(b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her ‘domicile’ in the territory of one of the latter Member States,

may be sued in another Member State only in accordance with Articles 3, 4 and 5.

Article 7. Residual jurisdiction

1. Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that State.

2. As against a respondent who is not habitually resident and is not either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his ‘domicile’ within the territory of one of the latter Member States, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

Section 2

Parental responsibility

Article 8. General jurisdiction

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.

Article 9. Continuing jurisdiction of the child’s former habitual residence

1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child’s former habitual residence shall, by way of exception to Article 8, retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child’s former habitual residence.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the

child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.

Article 10. Jurisdiction in cases of child abduction

In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

(i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

(ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);

(iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);

(iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

Article 11. Return of the child

1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter 'the 1980 Hague Convention'), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child

was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.

Article 12. Prorogation of jurisdiction

1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child; and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State; and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.

4. Where the child has his or her habitual residence in the territory of a third State which is not a contracting party to the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, jurisdiction under this Article shall be deemed to be in the child's interest, in particular if it is found impossible to hold proceedings in the third State in question.

Article 13. Jurisdiction based on the child's presence

1. Where a child's habitual residence cannot be established and jurisdiction

cannot be determined on the basis of Article 12, the courts of the Member State where the child is present shall have jurisdiction.

2. Paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their country.

Article 14. Residual jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State.

Article 15. Transfer to a court better placed to hear the case

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

(a) upon application from a party; or

(b) of the court's own motion; or

(c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

(a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.

Section 3 Common provisions

Article 16. Seising of a Court

1. A court shall be deemed to be 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 he 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 he was required to take to have the document lodged with the court.

Article 17. Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 18. Examination as to admissibility

1. Where a respondent habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1348/2000 shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3. Where the provisions of Regulation (EC) No 1348/2000 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 19. Lis pendens and dependent actions

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.

Article 20. Provisional, including protective, measures

1. In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

2. The measures referred to in paragraph 1 shall cease to apply when the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

CHAPTER III
RECOGNITION AND ENFORCEMENT

Section 1
Recognition

Article 21. Recognition of a judgment

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

The local jurisdiction of the court appearing in the list notified by each Member State to the Commission pursuant to Article 68 shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

Article 22. Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment

A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;

(b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;

(c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or

(d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 23. Grounds of non-recognition for judgments relating to parental responsibility

A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;

(b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;

(c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;

(d) on the request of any person claiming that the judgment infringes his or

her parental responsibility, if it was given without such person having been given an opportunity to be heard;

(e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;

(f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

or

(g) if the procedure laid down in Article 56 has not been complied with.

Article 24. Prohibition of review of jurisdiction of the court of origin

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Articles 22(a) and 23(a) may not be applied to the rules relating to jurisdiction set out in Articles 3 to 14.

Article 25. Differences in applicable law

The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Article 26. Non-review as to substance

Under no circumstances may a judgment be reviewed as to its substance.

Article 27. Stay of proceedings

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

Section 2

Application for a declaration of enforceability

Article 28. Enforceable judgments

1. A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland only when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 29. Jurisdiction of local courts

1. An application for a declaration of enforceability shall be submitted to the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

2. The local jurisdiction shall be determined by reference to the place of habitual residence of the person against whom enforcement is sought or by reference to the habitual residence of any child to whom the application relates.

Where neither of the places referred to in the first subparagraph can be found in the Member State of enforcement, the local jurisdiction shall be determined by reference to the place of enforcement.

Article 30. Procedure

1. The procedure for making the application shall be governed by the law of the Member State of enforcement.

2. The applicant must give an address for service within the area of jurisdiction of the court applied to. However, if the law of the Member State of enforcement does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

3. The documents referred to in Articles 37 and 39 shall be attached to the application.

Article 31. Decision of the court

1. The court applied to shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application.

2. The application may be refused only for one of the reasons specified in Articles 22, 23 and 24.

3. Under no circumstances may a judgment be reviewed as to its substance.

Article 32. Notice of the decision

The appropriate officer of the court shall without delay bring to the notice of the applicant the decision given on the application in accordance with the procedure laid down by the law of the Member State of enforcement.

Article 33. Appeal against the decision

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal shall be lodged with the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 18 shall apply.

5. An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

Article 34. Courts of appeal and means of contest

The judgment given on appeal may be contested only by the proceedings referred to in the list notified by each Member State to the Commission pursuant to Article 68.

Article 35. Stay of proceedings

1. The court with which the appeal is lodged under Articles 33 or 34 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin, or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.

2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

Article 36. Partial enforcement

1. Where a judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.

2. An applicant may request partial enforcement of a judgment.

Section 3
Provisions common to Sections 1 and 2

Article 37. Documents

1. A party seeking or contesting recognition or applying for a declaration of enforceability shall produce:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) the certificate referred to in Article 39.

2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:

- (a) the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document; or
- (b) any document indicating that the defendant has accepted the judgment unequivocally.

Article 38. Absence of documents

1. If the documents specified in Article 37(1)(b) or (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

2. If the court so requires, a translation of such documents shall be furnished. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 39. Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility

The competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility).

Section 4

Enforceability of certain judgments concerning rights of access and of certain judgments which require the return of the child

Article 40. Scope

1. This Section shall apply to:

- (a) rights of access; and
- (b) the return of a child entailed by a judgment given pursuant to Article 11 (8).

2. The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions in Sections 1 and 2 of this Chapter.

Article 41. Rights of access

1. The rights of access referred to in Article 40(1)(a) granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law of a judgment granting access rights, the court of origin may declare that the judgment shall be enforceable, notwithstanding any appeal.

2. The judge of origin shall issue the certificate referred to in paragraph 1 using the standard form in Annex III (certificate concerning rights of access) only if:

- (a) where the judgment was given in default, the person defaulting was

served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;

(b) all parties concerned were given an opportunity to be heard; and

(c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate shall be completed in the language of the judgment.

3. Where the rights of access involve a cross-border situation at the time of the delivery of the judgment, the certificate shall be issued *ex officio* when the judgment becomes enforceable, even if only provisionally. If the situation subsequently acquires a cross-border character, the certificate shall be issued at the request of one of the parties.

Article 42. Return of the child

1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article 11(b)(8), the court of origin may declare the judgment enforceable.

2. The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

(a) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;

(b) the parties were given an opportunity to be heard; and

(c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures.

The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex IV (certificate concerning return of the child(ren)).

The certificate shall be completed in the language of the judgment.

Article 43. Rectification of the certificate

1. The law of the Member State of origin shall be applicable to any rectification of the certificate.

2. No appeal shall lie against the issuing of a certificate pursuant to Articles 41(1) or 42(1).

Article 44. Effects of the certificate

The certificate shall take effect only within the limits of the enforceability of the judgment.

Article 45. Documents

1. A party seeking enforcement of a judgment shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate referred to in Article 41(1) or Article 42(1).

2. For the purposes of this Article,

– the certificate referred to in Article 41(1) shall be accompanied by a translation of point 12 relating to the arrangements for exercising right of access,

– the certificate referred to in Article 42(1) shall be accompanied by a translation

of its point 14 relating to the arrangements for implementing the measures taken to ensure the child's return.

The translation shall be into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement expressly accepts. The translation shall be certified by a person qualified to do so in one of the Member States.

Section 5 Authentic instruments and agreements

Article 46

Documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments.

Section 6 Other provisions

Article 47. Enforcement procedure

1. The enforcement procedure is governed by the law of the Member State of enforcement.

2. Any judgment delivered by a court of another Member State and declared to be enforceable in accordance with Section 2 or certified in accordance with Article 41(1) or Article 42(1) shall be enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State.

In particular, a judgment which has been certified according to Article 41(1) or Article 42(1) cannot be enforced if it is irreconcilable with a subsequent enforceable judgment.

Article 48. Practical arrangements for the exercise of rights of access

1. The courts of the Member State of enforcement may make practical arrangements for organising the exercise of rights of access, if the necessary arrangements have not or have not sufficiently been made in the judgment delivered by the courts of the Member State having jurisdiction as to the substance of the matter and provided the essential elements of this judgment are respected.

2. The practical arrangements made pursuant to paragraph 1 shall cease to apply pursuant to a later judgment by the courts of the Member State having jurisdiction as to the substance of the matter.

...

CHAPTER IV COOPERATION BETWEEN CENTRAL AUTHORITIES IN MATTERS OF PARENTAL RESPONSIBILITY

...

Article 55. Cooperation on cases specific to parental responsibility

The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to:

- (a) collect and exchange information:
 - (i) on the situation of the child;
 - (ii) on any procedures under way; or
 - (iii) on decisions taken concerning the child;

(b) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning rights of access and the return of the child;

(c) facilitate communications between courts, in particular for the application of Article 11(6) and (7) and Article 15;

(d) provide such information and assistance as is needed by courts to apply Article 56; and

(e) facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end.

Article 56. Placement of a child in another Member State

1. Where a court having jurisdiction under Articles 8 to 15 contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another Member State, it shall first consult the central authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement.

2. The judgment on placement referred to in paragraph 1 may be made in the requesting State only if the competent authority of the requested State has consented to the placement.

3. The procedures for consultation or consent referred to in paragraphs 1 and 2 shall be governed by the national law of the requested State.

4. Where the authority having jurisdiction under Articles 8 to 15 decides to place the child in a foster family, and where such placement is to take place in another Member State and where no public authority intervention is required in the latter Member State for domestic cases of child placement, it shall so inform the central authority or other authority having jurisdiction in the latter State.

Article 57. Working method

1. Any holder of parental responsibility may submit, to the central authority of the Member State of his or her habitual residence or to the central authority of the Member State where the child is habitually resident or present, a request for assistance as mentioned in Article 55. In general, the request shall include all available information of relevance to its enforcement. Where the request for assistance concerns the recognition or enforcement of a judgment on parental responsibility that falls within the scope of this Regulation, the holder of parental responsibility shall attach the relevant certificates provided for in Articles 39, 41(1) or 42(1).

2. Member States shall communicate to the Commission the official language or languages of the Community institutions other than their own in which communications to the central authorities can be accepted.

3. The assistance provided by the central authorities pursuant to Article 55 shall be free of charge.

4. Each central authority shall bear its own costs.

...

CHAPTER V RELATIONS WITH OTHER INSTRUMENTS

Article 59. Relation with other instruments

1. Subject to the provisions of Articles 60, 63, 64 and paragraph 2 of this Article, this Regulation shall, for the Member States, supersede conventions existing at the time of entry into force of this Regulation which have been concluded between two or more Member States and relate to matters governed by this Regulation.

2. (a) Finland and Sweden shall have the option of declaring that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and

guardianship, together with the Final Protocol thereto, will apply, in whole or in part, in their mutual relations, in place of the rules of this Regulation. Such declarations shall be annexed to this Regulation and published in the Official Journal of the European Union. They may be withdrawn, in whole or in part, at any moment by the said Member States.

(b) The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.

(c) The rules of jurisdiction in any future agreement to be concluded between the Member States referred to in subparagraph (a) which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.

(d) Judgments handed down in any of the Nordic States which have made the declaration provided for in subparagraph (a) under a forum of jurisdiction corresponding to one of those laid down in Chapter II of this Regulation, shall be recognised and enforced in the other Member States under the rules laid down in Chapter III of this Regulation.

3. Member States shall send to the Commission:

(a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraph 2(a) and (c);

(b) any denunciations of, or amendments to, those agreements or uniform laws.

Article 60. Relations with certain multilateral conventions

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

(a) the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;

(b) the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages;

(c) the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations;

(d) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children; and

(e) the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

Article 61. Relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

As concerns the relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, this Regulation shall apply:

(a) where the child concerned has his or her habitual residence on the territory of a Member State;

(b) as concerns the recognition and enforcement of a judgment given in a court of a Member State on the territory of another Member State, even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the said Convention.

Article 62. Scope of effects

1. The agreements and conventions referred to in Articles 59(1), 60 and 61 shall continue to have effect in relation to matters not governed by this Regulation.

2. The conventions mentioned in Article 60, in particular the 1980 Hague

Convention, continue to produce effects between the Member States which are party thereto, in compliance with Article 60.

...

CHAPTER VI TRANSITIONAL PROVISIONS

Article 64

1. The provisions of this Regulation shall apply only to legal proceedings instituted, to documents formally drawn up or registered as authentic instruments and to agreements concluded between the parties after its date of application in accordance with Article 72.

2. Judgments given after the date of application of this Regulation in proceedings instituted before that date but after the date of entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation if jurisdiction was founded on rules which accorded with those provided for either in Chapter II or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

3. Judgments given before the date of application of this Regulation in proceedings instituted after the entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings.

4. Judgments given before the date of application of this Regulation but after the date of entry into force of Regulation (EC) No 1347/2000 in proceedings instituted before the date of entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings and that jurisdiction was founded on rules which accorded with those provided for either in Chapter II of this Regulation or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

CHAPTER VII FINAL PROVISIONS

Article 65. Review

No later than 1 January 2012, and every five years thereafter, the Commission shall present to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Regulation on the basis of information supplied by the Member States. The report shall be accompanied if need be by proposals for adaptations.

Article 66. Member States with two or more legal systems

With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

- (a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;
- (b) any reference to nationality, or in the case of the United Kingdom 'domicile', shall refer to the territorial unit designated by the law of that State;

(c) any reference to the authority of a Member State shall refer to the authority of a territorial unit within that State which is concerned;

(d) any reference to the rules of the requested Member State shall refer to the rules of the territorial unit in which jurisdiction, recognition or enforcement is invoked.

...

Article 71. Repeal of Regulation (EC) No 1347/2000

1. Regulation (EC) No 1347/2000 shall be repealed as from the date of application of this Regulation.

2. Any reference to Regulation (EC) No 1347/2000 shall be construed as a reference to this Regulation according to the comparative table in Annex V.

Article 72. Entry into force

This Regulation shall enter into force on 1 August 2004.

The Regulation shall apply from 1 March 2005, with the exception of Articles 67, 68, 69 and 70, which shall apply from 1 August 2004.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 27 November 2003.

REGULATION (EC) NO 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 JULY 2007 ON THE LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS ('ROME II')

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 25 June 2007.

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Community is to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.

(2) According to Article 65(b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement the principle of mutual recognition.

(4) On 30 November 2000, the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.

(5) The Hague Programme, adopted by the European Council on 5 November 2004, called for work to be pursued actively on the rules of conflict of laws regarding non-contractual obligations ('Rome II').

(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I') and the instruments dealing with the law applicable to contractual obligations.

(8) This Regulation should apply irrespective of the nature of the court or tribunal seised.

(9) Claims arising out of '*acta iure imperii*' should include claims against officials who act on behalf of the State and liability for acts of public authorities, including liability of publicly appointed office-holders. Therefore, these matters should be excluded from the scope of this Regulation.

(10) Family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.

(11) The concept of a non-contractual obligation varies from one Member State to another. Therefore for the purposes of this Regulation non-contractual obligation should be understood as an autonomous concept. The conflict-of-law rules set out in this Regulation should also cover non-contractual obligations arising out of strict liability.

(12) The law applicable should also govern the question of the capacity to incur liability in tort/delict.

(13) Uniform rules applied irrespective of the law they designate may avert the risk of distortions of competition between Community litigants.

(14) The requirement of legal certainty and the need to do justice in individual cases are essential elements of an area of justice. This Regulation provides for the connecting factors which are the most appropriate to achieve these objectives. Therefore, this Regulation provides for a general rule but also for specific rules and, in certain provisions, for an 'escape clause' which allows a departure from these rules where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country. This set of rules thus creates a flexible framework of conflict-of-law rules. Equally, it enables the court seised to treat individual cases in an appropriate manner.

(15) The principle of the *lex loci delicti commissi* is the basic solution for non-contractual obligations in virtually all the Member States, but the practical application of the principle where the component factors of the case are spread over several countries varies. This situation engenders uncertainty as to the law applicable.

(16) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. A connection with the country where the direct damage occurred (*lex loci damni*) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.

(17) The law applicable should be determined on the basis of where the damage occurs, regardless of the country or countries in which the indirect consequences could occur. Accordingly, in cases of personal injury or damage to

property, the country in which the damage occurs should be the country where the injury was sustained or the property was damaged respectively.

(18) The general rule in this Regulation should be the '*lex loci damni*' provided for in Article 4(1). Article 4(2) should be seen as an exception to this general principle, creating a special connection where the parties have their habitual residence in the same country. Article 4(3) should be understood as an 'escape clause' from Article 4(1) and (2), where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country.

(19) Specific rules should be laid down for special torts/delicts where the general rule does not allow a reasonable balance to be struck between the interests at stake.

(20) The conflict-of-law rule in matters of product liability should meet the objectives of fairly spreading the risks inherent in a modern high-technology society, protecting consumers' health, stimulating innovation, securing undistorted competition and facilitating trade. Creation of a cascade system of connecting factors, together with a foreseeability clause, is a balanced solution in regard to these objectives. The first element to be taken into account is the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country. The other elements of the cascade are triggered if the product was not marketed in that country, without prejudice to Article 4(2) and to the possibility of a manifestly closer connection to another country.

(21) The special rule in Article 6 is not an exception to the general rule in Article 4(1) but rather a clarification of it. In matters of unfair competition, the conflict-of-law rule should protect competitors, consumers and the general public and ensure that the market economy functions properly. The connection to the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected generally satisfies these objectives.

(22) The non-contractual obligations arising out of restrictions of competition in Article 6(3) should cover infringements of both national and Community competition law. The law applicable to such non-contractual obligations should be the law of the country where the market is, or is likely to be, affected. In cases where the market is, or is likely to be, affected in more than one country, the claimant should be able in certain circumstances to choose to base his or her claim on the law of the court seised.

(23) For the purposes of this Regulation, the concept of restriction of competition should cover prohibitions on agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within a Member State or within the internal market, as well as prohibitions on the abuse of a dominant position within a Member State or within the internal market, where such agreements, decisions, concerted practices or abuses are prohibited by Articles 81 and 82 of the Treaty or by the law of a Member State.

(24) 'Environmental damage' should be understood as meaning adverse change in a natural resource, such as water, land or air, impairment of a function performed by that resource for the benefit of another natural resource or the public, or impairment of the variability among living organisms.

(25) Regarding environmental damage, Article 174 of the Treaty, which provides that there should be a high level of protection based on the precautionary principle and the principle that preventive action should be taken, the principle of priority for corrective action at source and the principle that the polluter pays, fully justifies the use of the principle of discriminating in favour of the person sustaining the damage. The question of when the person seeking compensation can make the choice of the law applicable should be determined in accordance with the law of the Member State in which the court is seised.

(26) Regarding infringements of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved. For the purposes of this Regulation, the term 'intellectual property rights' should be interpreted as meaning, for instance, copyright, related rights, the *sui generis* right for the protection of databases and industrial property rights.

(27) The exact concept of industrial action, such as strike action or lock-out, varies from one Member State to another and is governed by each Member State's internal rules. Therefore, this Regulation assumes as a general principle that the law of the country where the industrial action was taken should apply, with the aim of protecting the rights and obligations of workers and employers.

(28) The special rule on industrial action in Article 9 is without prejudice to the conditions relating to the exercise of such action in accordance with national law and without prejudice to the legal status of trade unions or of the representative organisations of workers as provided for in the law of the Member States.

(29) Provision should be made for special rules where damage is caused by an act other than a tort/delict, such as unjust enrichment, *negotiorum gestio* and *culpa in contrahendo*.

(30) *Culpa in contrahendo* for the purposes of this Regulation is an autonomous concept and should not necessarily be interpreted within the meaning of national law. It should include the violation of the duty of disclosure and the breakdown of contractual negotiations. Article 12 covers only non-contractual obligations presenting a direct link with the dealings prior to the conclusion of a contract. This means that if, while a contract is being negotiated, a person suffers personal injury, Article 4 or other relevant provisions of this Regulation should apply.

(31) To respect the principle of party autonomy and to enhance legal certainty, the parties should be allowed to make a choice as to the law applicable to a non-contractual obligation. This choice should be expressed or demonstrated with reasonable certainty by the circumstances of the case. Where establishing the existence of the agreement, the court has to respect the intentions of the parties. Protection should be given to weaker parties by imposing certain conditions on the choice.

(32) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. In particular, the application of a provision of the law designated by this Regulation which would have the effect of causing non-compensatory exemplary or punitive damages of an excessive nature to be awarded may, depending on the circumstances of the case and the legal order of the Member State of the court seised, be regarded as being contrary to the public policy (*ordre public*) of the forum.

(33) According to the current national rules on compensation awarded to victims of road traffic accidents, when quantifying damages for personal injury in cases in which the accident takes place in a State other than that of the habitual residence of the victim, the court seised should take into account all the relevant actual circumstances of the specific victim, including in particular the actual losses and costs of after-care and medical attention.

(34) In order to strike a reasonable balance between the parties, account must be taken, in so far as appropriate, of the rules of safety and conduct in operation in the country in which the harmful act was committed, even where the non-contractual obligation is governed by the law of another country. The term 'rules of safety and conduct' should be interpreted as referring to all regulations having any relation to safety and conduct, including, for example, road safety rules in the case of an accident.

(35) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, does not exclude the possibility of inclusion of

conflict-of-law rules relating to non-contractual obligations in provisions of Community law with regard to particular matters.

This Regulation should not prejudice the application of other instruments laying down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

(36) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the *Official Journal of the European Union* on the basis of information supplied by the Member States.

(37) The Commission will make a proposal to the European Parliament and the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude on their own behalf agreements with third countries in individual and exceptional cases, concerning sectoral matters, containing provisions on the law applicable to non-contractual obligations.

(38) Since the objective of this Regulation cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary to attain that objective.

(39) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Regulation.

(40) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I SCOPE

Article 1. Scope

1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

2. The following shall be excluded from the scope of this Regulation:

(a) non-contractual obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects including maintenance obligations;

(b) non-contractual obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;

(c) non-contractual obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

(d) non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding up of companies and other bodies corporate or unincorporated, the personal liability of officers and members as such for the obligations of the company or body and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents;

(e) non-contractual obligations arising out of the relations between the settlors, trustees and beneficiaries of a trust created voluntarily;

(f) non-contractual obligations arising out of nuclear damage;

(g) non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Articles 21 and 22.

4. For the purposes of this Regulation, 'Member State' shall mean any Member State other than Denmark.

Article 1(4) as amended by SI 2019/834, reg 11(2):

4. For the purposes of this Regulation ['relevant state' means the United Kingdom or] any Member State other than Denmark.

Article 2. Non-contractual obligations

1. For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.

2. This Regulation shall apply also to non-contractual obligations that are likely to arise.

3. Any reference in this Regulation to:

(a) an event giving rise to damage shall include events giving rise to damage that are likely to occur; and

(b) damage shall include damage that is likely to occur.

Article 3. Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Article 3 as amended by SI 2019/834, reg 11(3):

Any law specified by this Regulation shall be applied whether or not it is the law of [the United Kingdom or a part of the United Kingdom].

CHAPTER II
TORTS/DELICTS

Article 4. General rule

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in

paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 5. Product liability

1. Without prejudice to Article 4(2), the law applicable to a non-contractual obligation arising out of damage caused by a product shall be:

- (a) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that,
- (b) the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that,
- (c) the law of the country in which the damage occurred, if the product was marketed in that country.

However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).

2. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 6. Unfair competition and acts restricting free competition

1. The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.

2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 4 shall apply.

3. (a) The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected.

- (b) When the market is, or is likely to be, affected in more than one country, the person seeking compensation for damage who sues in the court of the domicile of the defendant, may instead choose to base his or her claim on the law of the court seised, provided that the market in that Member State is amongst those directly and substantially affected by the restriction of competition out of which the non-contractual obligation on which the claim is based arises; where the claimant sues, in accordance with the applicable rules on jurisdiction, more than one defendant in that court, he or she can only choose to base his or her claim on the law of that court if the restriction of competition on which the claim against each of these defendants relies directly and substantially affects also the market in the Member State of that court.

4. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 6(3)(b) as amended by SI 2019/834:

- (b) When the market is, or is likely to be, affected in more than one country, the person seeking compensation for damage who sues in [a court in a part of the United Kingdom], may instead choose to base his or her claim on the law of the court seised, provided that the market in [the United Kingdom] is amongst those directly and substantially affected by the restriction of competition out of which the non-contractual obligation on which the claim is based arises; where the claimant sues, in accordance with the applicable rules on jurisdiction, more

than one defendant in that court, he or she can only choose to base his or her claim on the law of that court if the restriction of competition on which the claim against each of these defendants relies directly and substantially affects also the market in the [United Kingdom].

Article 7. Environmental damage

The law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred.

Article 8. Infringement of intellectual property rights

1. The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.

2. In the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed.

3. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 8(2) as amended by and Art 8(2A) added by SI 2019/834, reg 11(5):

2. In the case of a non-contractual obligation arising from an infringement [which occurred before exit day] of a unitary Community intellectual property right, the law applicable [in any proceedings of which a court was seised before exit day and which are not concluded before exit day] shall, for any question that is not governed by [retained EU law], be the law of the country in which the act of infringement was committed.

[2A. In paragraph 2, ‘unitary Community intellectual property right’ refers to that right as it had effect immediately before exit day.]

Article 9. Industrial action

Without prejudice to Article 4(2), the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

CHAPTER III UNJUST ENRICHMENT, NEGOTIORUM GESTIO AND CULPA IN CONTRAHENDO

Article 10. Unjust enrichment

1. If a non-contractual obligation arising out of unjust enrichment, including payment of amounts wrongly received, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to unjust enrichment occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the unjust enrichment took place.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely

connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

Article 11. *Negotiorum gestio*

1. If a non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that non-contractual obligation, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1, and the parties have their habitual residence in the same country when the event giving rise to the damage occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the act was performed.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

Article 12. *Culpa in contrahendo*

1. The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.

2. Where the law applicable cannot be determined on the basis of paragraph 1, it shall be:

(a) the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occurred; or

(b) where the parties have their habitual residence in the same country at the time when the event giving rise to the damage occurs, the law of that country; or

(c) where it is clear from all the circumstances of the case that the non-contractual obligation arising out of dealings prior to the conclusion of a contract is manifestly more closely connected with a country other than that indicated in points (a) and (b), the law of that other country.

Article 13. *Applicability of Article 8*

For the purposes of this Chapter, Article 8 shall apply to non-contractual obligations arising from an infringement of an intellectual property right.

CHAPTER IV FREEDOM OF CHOICE

Article 14. *Freedom of choice*

1. The parties may agree to submit non-contractual obligations to the law of their choice:

(a) by an agreement entered into after the event giving rise to the damage occurred; or

(b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred.

The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties.

2. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the

application of provisions of the law of that other country which cannot be derogated from by agreement.

3. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in one or more of the Member States, the parties' choice of the law applicable other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

Article 14(3) as amended by SI 2019/834, reg 11(6):

3. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in one or more of the [relevant states], the parties' choice of the law applicable other than that of a [relevant state] shall not prejudice the application of [retained EU law], which cannot be derogated from by agreement.

CHAPTER V COMMON RULES

Article 15. Scope of the law applicable

The law applicable to non-contractual obligations under this Regulation shall govern in particular:

- (a) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;
- (b) the grounds for exemption from liability, any limitation of liability and any division of liability;
- (c) the existence, the nature and the assessment of damage or the remedy claimed;
- (d) within the limits of powers conferred on the court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation;
- (e) the question whether a right to claim damages or a remedy may be transferred, including by inheritance;
- (f) persons entitled to compensation for damage sustained personally;
- (g) liability for the acts of another person;
- (h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

Article 16. Overriding mandatory provisions

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

Article 17. Rules of safety and conduct

In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability.

Article 18. Direct action against the insurer of the person liable

The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

Article 19. Subrogation

Where a person ('the creditor') has a non-contractual claim upon another ('the debtor'), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third

person's duty to satisfy the creditor shall determine whether, and the extent to which, the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

Article 20. Multiple liability

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the question of that debtor's right to demand compensation from the other debtors shall be governed by the law applicable to that debtor's non-contractual obligation towards the creditor.

Article 21. Formal validity

A unilateral act intended to have legal effect and relating to a non-contractual obligation shall be formally valid if it satisfies the formal requirements of the law governing the non-contractual obligation in question or the law of the country in which the act is performed.

Article 22. Burden of proof

1. The law governing a non-contractual obligation under this Regulation shall apply to the extent that, in matters of non-contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. Acts intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 21 under which that act is formally valid, provided that such mode of proof can be administered by the forum.

CHAPTER VI OTHER PROVISIONS

Article 23. Habitual residence

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.

Article 24. Exclusion of renvoi

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law.

Article 25. States with more than one legal system*

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of non-contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State within which different territorial units have their own rules of law in respect of non-contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Article 25(2) is omitted by SI 2019/834, reg 11(7).

*Reg 4 of The Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008 (SSI 2008/404) provides that, notwithstanding Art 25(2), the Regulation applies in the case of conflicts between (a) the laws of different parts of the UK; or (b) between the laws of one or more parts of the UK and Gibraltar.

Article 26. Public policy of the forum

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 27. Relationship with other provisions of Community law

This Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

Article 27 as amended by SI 2019/834, reg 11(8):

Article 27. Relationship with other provisions of [retained EU law]

This Regulation shall not prejudice the application of provisions of [retained EU law] which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

Article 28. Relationship with existing international conventions

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 28 as amended by SI 2019/834, reg 11(9):

1. This Regulation shall not prejudice the application of international conventions to which [the United Kingdom was a party] at the time when this Regulation [was adopted] and which lay down conflict-of-law rules relating to non-contractual obligations.

2. However, this Regulation shall, as between [relevant states], take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

CHAPTER VII FINAL PROVISIONS

Article 29. List of conventions

1. By 11 July 2008, Member States shall notify the Commission of the conventions referred to in Article 28(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. The Commission shall publish in the *Official Journal of the European Union* within six months of receipt:

- (i) a list of the conventions referred to in paragraph 1;
- (ii) the denunciations referred to in paragraph 1.

Article 29 is omitted by SI 2019/834, reg 11(10).

Article 30. Review clause

1. Not later than 20 August 2011, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. The report shall include:

- (i) a study on the effects of the way in which foreign law is treated in the different jurisdictions and on the extent to which courts in the Member States apply foreign law in practice pursuant to this Regulation;

(ii) a study on the effects of Article 28 of this Regulation with respect to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents.

2. Not later than 31 December 2008, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, taking into account rules relating to freedom of the press and freedom of expression in the media, and conflict-of-law issues related to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Article 30 is omitted by SI 2019/834, reg 11(10).

Article 31. Application in time

This Regulation shall apply to events giving rise to damage which occur after its entry into force.

Article 31 as amended by SI 2019/834, reg 11(11):

This Regulation shall apply to events giving rise to damage which occur [on or after 11 January 2009].

Article 32. Date of application

This Regulation shall apply from 11 January 2009, except for Article 29, which shall apply from 11 July 2007. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Article 32 is omitted by SI 2019/834, reg 11(12).

Done at Strasbourg, 11 July 2007

REGULATION (EC) NO 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 JUNE 2008 ON THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (ROME I)

Official Journal L 177, 04/07/2008 pp 6-16

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Community is to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.

(2) According to Article 65, point (b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of

judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.

(4) On 30 November 2000 the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.

(5) The Hague Programme, adopted by the European Council on 5 November 2004, called for work to be pursued actively on the conflict-of-law rules regarding contractual obligations (Rome I).

(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

(8) Family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.

(9) Obligations under bills of exchange, cheques and promissory notes and other negotiable instruments should also cover bills of lading to the extent that the obligations under the bill of lading arise out of its negotiable character.

(10) Obligations arising out of dealings prior to the conclusion of the contract are covered by Article 12 of Regulation (EC) No 864/2007. Such obligations should therefore be excluded from the scope of this Regulation.

(11) The parties' freedom to choose the applicable law should be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations.

(12) An agreement between the parties to confer on one or more courts or tribunals of a Member State exclusive jurisdiction to determine disputes under the contract should be one of the factors to be taken into account in determining whether a choice of law has been clearly demonstrated.

(13) This Regulation does not preclude parties from incorporating by reference into their contract a non-State body of law or an international convention.

(14) Should the Community adopt, in an appropriate legal instrument, rules of substantive contract law, including standard terms and conditions, such instrument may provide that the parties may choose to apply those rules.

(15) Where a choice of law is made and all other elements relevant to the situation are located in a country other than the country whose law has been chosen, the choice of law should not prejudice the application of provisions of the law of that country which cannot be derogated from by agreement. This rule should apply whether or not the choice of law was accompanied by a choice of court or tribunal. Whereas no substantial change is intended as compared with Article 3(3) of the 1980 Convention on the Law Applicable to Contractual Obligations (the Rome Convention), the wording of this Regulation is aligned as far as possible with Article 14 of Regulation (EC) No 864/2007.

(16) To contribute to the general objective of this Regulation, legal certainty in the European judicial area, the conflict-of-law rules should be highly foreseeable. The courts should, however, retain a degree of discretion to determine the law that is most closely connected to the situation.

(17) As far as the applicable law in the absence of choice is concerned, the concept of 'provision of services' and 'sale of goods' should be interpreted in the same way as when applying Article 5 of Regulation (EC) No 44/2001 in so far as sale of goods and provision of services are covered by that Regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.

(18) As far as the applicable law in the absence of choice is concerned, multi-lateral systems should be those in which trading is conducted, such as regulated markets and multilateral trading facilities as referred to in Article 4 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, regardless of whether or not they rely on a central counterparty.

(19) Where there has been no choice of law, the applicable law should be determined in accordance with the rule specified for the particular type of contract. Where the contract cannot be categorised as being one of the specified types or where its elements fall within more than one of the specified types, it should be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence. In the case of a contract consisting of a bundle of rights and obligations capable of being categorised as falling within more than one of the specified types of contract, the characteristic performance of the contract should be determined having regard to its centre of gravity.

(20) Where the contract is manifestly more closely connected with a country other than that indicated in Article 4(1) or (2), an escape clause should provide that the law of that other country is to apply. In order to determine that country, account should be taken, *inter alia*, of whether the contract in question has a very close relationship with another contract or contracts.

(21) In the absence of choice, where the applicable law cannot be determined either on the basis of the fact that the contract can be categorised as one of the specified types or as being the law of the country of habitual residence of the party required to effect the characteristic performance of the contract, the contract should be governed by the law of the country with which it is most closely connected. In order to determine that country, account should be taken, *inter alia*, of whether the contract in question has a very close relationship with another contract or contracts.

(22) As regards the interpretation of contracts for the carriage of goods, no change in substance is intended with respect to Article 4(4), third sentence, of the Rome Convention. Consequently, single-voyage charter parties and other contracts the main purpose of which is the carriage of goods should be treated as contracts for the carriage of goods. For the purposes of this Regulation, the term 'consignor' should refer to any person who enters into a contract of carriage with the carrier and the term 'the carrier' should refer to the party to the contract who undertakes to carry the goods, whether or not he performs the carriage himself.

(23) As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.

(24) With more specific reference to consumer contracts, the conflict-of-law rule should make it possible to cut the cost of settling disputes concerning what are commonly relatively small claims and to take account of the development of distance-selling techniques. Consistency with Regulation (EC) No 44/2001 requires both that there be a reference to the concept of directed activity as a condition for applying the consumer protection rule and that the concept be interpreted harmoniously in Regulation (EC) No 44/2001 and this Regulation, bearing in mind that a joint declaration by the Council and the Commission on Article 15 of Regulation (EC) No 44/2001 states that 'for Article 15(1)(c) to be applicable it is not sufficient for an undertaking to target its activities at the Member State of the consumer's

residence, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities'. The declaration also states that 'the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by whatever means. In this respect, the language or currency which a website uses does not constitute a relevant factor.'

(25) Consumers should be protected by such rules of the country of their habitual residence that cannot be derogated from by agreement, provided that the consumer contract has been concluded as a result of the professional pursuing his commercial or professional activities in that particular country. The same protection should be guaranteed if the professional, while not pursuing his commercial or professional activities in the country where the consumer has his habitual residence, directs his activities by any means to that country or to several countries, including that country, and the contract is concluded as a result of such activities.

(26) For the purposes of this Regulation, financial services such as investment services and activities and ancillary services provided by a professional to a consumer, as referred to in sections A and B of Annex I to Directive 2004/39/EC, and contracts for the sale of units in collective investment undertakings, whether or not covered by Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) should be subject to Article 6 of this Regulation. Consequently, when a reference is made to terms and conditions governing the issuance or offer to the public of transferable securities or to the subscription and redemption of units in collective investment undertakings, that reference should include all aspects binding the issuer or the offeror to the consumer, but should not include those aspects involving the provision of financial services.

(27) Various exceptions should be made to the general conflict-of-law rule for consumer contracts. Under one such exception the general rule should not apply to contracts relating to rights in rem in immovable property or tenancies of such property unless the contract relates to the right to use immovable property on a timeshare basis within the meaning of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

(28) It is important to ensure that rights and obligations which constitute a financial instrument are not covered by the general rule applicable to consumer contracts, as that could lead to different laws being applicable to each of the instruments issued, therefore changing their nature and preventing their fungible trading and offering. Likewise, whenever such instruments are issued or offered, the contractual relationship established between the issuer or the offeror and the consumer should not necessarily be subject to the mandatory application of the law of the country of habitual residence of the consumer, as there is a need to ensure uniformity in the terms and conditions of an issuance or an offer. The same rationale should apply with regard to the multilateral systems covered by Article 4(1)(h), in respect of which it should be ensured that the law of the country of habitual residence of the consumer will not interfere with the rules applicable to contracts concluded within those systems or with the operator of such systems.

(29) For the purposes of this Regulation, references to rights and obligations constituting the terms and conditions governing the issuance, offers to the public or public take-over bids of transferable securities and references to the subscription and redemption of units in collective investment undertakings should include the terms governing, *inter alia*, the allocation of securities or units, rights in the event of over-subscription, withdrawal rights and similar matters in the context of the offer as well as those matters referred to in Articles 10, 11, 12 and 13, thus

ensuring that all relevant contractual aspects of an offer binding the issuer or the offeror to the consumer are governed by a single law.

(30) For the purposes of this Regulation, financial instruments and transferable securities are those instruments referred to in Article 4 of Directive 2004/39/EC.

(31) Nothing in this Regulation should prejudice the operation of a formal arrangement designated as a system under Article 2(a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.

(32) Owing to the particular nature of contracts of carriage and insurance contracts, specific provisions should ensure an adequate level of protection of passengers and policy holders. Therefore, Article 6 should not apply in the context of those particular contracts.

(33) Where an insurance contract not covering a large risk covers more than one risk, at least one of which is situated in a Member State and at least one of which is situated in a third country, the special rules on insurance contracts in this Regulation should apply only to the risk or risks situated in the relevant Member State or Member States.

(34) The rule on individual employment contracts should not prejudice the application of the overriding mandatory provisions of the country to which a worker is posted in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

(35) Employees should not be deprived of the protection afforded to them by provisions which cannot be derogated from by agreement or which can only be derogated from to their benefit.

(36) As regards individual employment contracts, work carried out in another country should be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer should not preclude the employee from being regarded as carrying out his work in another country temporarily.

(37) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. The concept of 'overriding mandatory provisions' should be distinguished from the expression 'provisions which cannot be derogated from by agreement' and should be construed more restrictively.

(38) In the context of voluntary assignment, the term 'relationship' should make it clear that Article 14(1) also applies to the property aspects of an assignment, as between assignor and assignee, in legal orders where such aspects are treated separately from the aspects under the law of obligations. However, the term 'relationship' should not be understood as relating to any relationship that may exist between assignor and assignee. In particular, it should not cover preliminary questions as regards a voluntary assignment or a contractual subrogation. The term should be strictly limited to the aspects which are directly relevant to the voluntary assignment or contractual subrogation in question.

(39) For the sake of legal certainty there should be a clear definition of habitual residence, in particular for companies and other bodies, corporate or unincorporated. Unlike Article 60(1) of Regulation (EC) No 44/2001, which establishes three criteria, the conflict-of-law rule should proceed on the basis of a single criterion; otherwise, the parties would be unable to foresee the law applicable to their situation.

(40) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, should not exclude the possibility of inclusion of

conflict-of-law rules relating to contractual obligations in provisions of Community law with regard to particular matters.

This Regulation should not prejudice the application of other instruments laying down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

(41) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time when this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the Official Journal of the European Union on the basis of information supplied by the Member States.

(42) The Commission will make a proposal to the European Parliament and to the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude, on their own behalf, agreements with third countries in individual and exceptional cases, concerning sectoral matters and containing provisions on the law applicable to contractual obligations.

(43) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to attain its objective.

(44) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified its wish to take part in the adoption and application of the present Regulation.

(45) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(46) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I SCOPE

Article 1. Material scope

1. This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

It shall not apply, in particular, to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

- (a) questions involving the status or legal capacity of natural persons, without prejudice to Article 13;
- (b) obligations arising out of family relationships and relationships deemed

by the law applicable to such relationships to have comparable effects, including maintenance obligations;

(c) obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;

(d) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

(e) arbitration agreements and agreements on the choice of court;

(f) questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body;

(g) the question whether an agent is able to bind a principal, or an organ to bind a company or other body corporate or unincorporated, in relation to a third party;

(h) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

(i) obligations arising out of dealings prior to the conclusion of a contract;

(j) insurance contracts arising out of operations carried out by organisations other than undertakings referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Article 18.

4. In this Regulation, the term 'Member State' shall mean Member States to which this Regulation applies. However, in Article 3(4) and Article 7 the term shall mean all the Member States.

Article 1(2)(j) as amended by SI 2019/834, reg 10(2)(a):

(j) insurance contracts arising out of operations carried out by organisations other than undertakings referred to in [Article 2(1) of Directive 2009/138/EU which carry on life assurance under Article 2(3) of that Directive] the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.

Article 1(4) as substituted by SI 2019/834, reg 10(2)(b):

4. In this Regulation, 'relevant state' means the United Kingdom and—

(a) in Article 3(4) and Article 7, all the Member States;

(b) in all other Articles, the Member States to which Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), as it has effect in EU law and as amended from time to time, applies.

Article 2. Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Article 2 as amended by SI 2019/834, reg 10(3):

Any law specified by this Regulation shall be applied whether or not it is the law of [the United Kingdom or a part of the United Kingdom].

CHAPTER II UNIFORM RULES

Article 3. Freedom of choice

1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13.

Article 3(4) as amended by SI 2019/834, reg 10(4):

4. Where all other elements relevant to the situation at the time of the choice are located in one or more [relevant states], the parties' choice of applicable law other than that of a [relevant state] shall not prejudice the application of provisions of [retained EU law], which cannot be derogated from by agreement.

Article 4. Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

(a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;

(b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;

(c) a contract relating to a right in rem in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;

(d) notwithstanding point (c), a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months shall be governed by the law of the country where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same country;

(e) a franchise contract shall be governed by the law of the country where the franchisee has his habitual residence;

(f) a distribution contract shall be governed by the law of the country where the distributor has his habitual residence;

(g) a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined;

(h) a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, as defined by Article 4(1), point (17) of

Directive 2004/39/EC, in accordance with non-discretionary rules and governed by a single law, shall be governed by that law.

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.

Article 4(1)(h) as amended by SI 2019/834, reg 10(5):

(h) a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, as defined [in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2000], in accordance with non-discretionary rules and governed by a single law, shall be governed by that law.

Article 5. Contracts of carriage

1. To the extent that the law applicable to a contract for the carriage of goods has not been chosen in accordance with Article 3, the law applicable shall be the law of the country of habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

2. To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with the second subparagraph, the law applicable shall be the law of the country where the passenger has his habitual residence, provided that either the place of departure or the place of destination is situated in that country. If these requirements are not met, the law of the country where the carrier has his habitual residence shall apply.

The parties may choose as the law applicable to a contract for the carriage of passengers in accordance with Article 3 only the law of the country where:

- (a) the passenger has his habitual residence; or
- (b) the carrier has his habitual residence; or
- (c) the carrier has his place of central administration; or
- (d) the place of departure is situated; or
- (e) the place of destination is situated.

3. Where it is clear from all the circumstances of the case that the contract, in the absence of a choice of law, is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

Article 6. Consumer contracts

1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

- (a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
- (b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

2. Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.

3. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.

4. Paragraphs 1 and 2 shall not apply to:

(a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;

(b) a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

(c) a contract relating to a right in rem in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive 94/47/EC;

(d) rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings in so far as these activities do not constitute provision of a financial service;

(e) a contract concluded within the type of system falling within the scope of Article 4(1)(h)

Article 6(4)(b) and (c) as amended by SI 2019/834, reg 10(6):

(b) a contract of carriage other than a contract relating to package travel within the meaning of [Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements];

(c) a contract relating to a right in rem in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of [Directive 2008/122/EC];

Article 7. Insurance contracts

1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts.

2. An insurance contract covering a large risk as defined in Article 5(d) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation.

To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

3. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3:

(a) the law of any Member State where the risk is situated at the time of conclusion of the contract;

(b) the law of the country where the policy holder has his habitual residence;

(c) in the case of life assurance, the law of the Member State of which the policy holder is a national;

(d) for insurance contracts covering risks limited to events occurring in one Member State other than the Member State where the risk is situated, the law of that Member State;

(e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country of habitual residence of the policy holder.

Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom.

To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract.

4. The following additional rules shall apply to insurance contracts covering risks for which a Member State imposes an obligation to take out insurance:

(a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail;

(b) by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance.

5. For the purposes of paragraph 3, third subparagraph, and paragraph 4, where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State.

6. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 1(1)(g) of Directive 2002/83/EC.

Article 7 as amended by SI 2019/834, reg 10(7):

Article 7. Insurance contracts

1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a [relevant state], and to all other insurance contracts covering risks situated inside the territory of the [relevant states]. It shall not apply to reinsurance contracts.

2. An insurance contract covering a large risk as defined in [Article 13(27) of Directive 2009/138/EU] shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation.

To the extent that the applicable law has not been chosen by the parties, the

insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

3. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3:

(a) the law of any [relevant state] where the risk is situated at the time of conclusion of the contract;

(b) the law of the country where the policy holder has his habitual residence;

(c) in the case of life assurance, the law of the [relevant state] of which the policy holder is a national;

(d) for insurance contracts covering risks limited to events occurring in one [relevant state] other than the [relevant state] where the risk is situated, the law of that [relevant state];

(e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different [relevant states], the law of any of the [relevant states] concerned or the law of the country of habitual residence of the policy holder.

Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom.

To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract.

4. The following additional [rule] shall apply to insurance contracts covering risks for which a [relevant state] imposes an obligation to take out insurance:

(a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the [relevant state] that imposes the obligation. Where the law of the [relevant state] in which the risk is situated and the law of the [relevant state] imposing the obligation to take out insurance contradict each other, the latter shall prevail;

[...].

5. For the purposes of paragraph 3, third subparagraph, and paragraph 4, where the contract covers risks situated in more than one [relevant state], the contract shall be considered as constituting several contracts each relating to only one [relevant state].

6. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with [Article 13(13) of Directive 2009/138/EU] and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of [Article 13(14) of Directive 2009/138/EU].

Article 8. Individual employment contracts

1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the

country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.

Article 9. Overriding mandatory provisions

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

Article 10. Consent and material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.

2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 11. Formal validity

1. A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.

2. A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time.

3. A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Regulation, or of the law of the country where the act was done, or of the law of the country where the person by whom it was done had his habitual residence at that time.

4. Paragraphs 1, 2 and 3 of this Article shall not apply to contracts that fall within the scope of Article 6. The form of such contracts shall be governed by the law of the country where the consumer has his habitual residence.

5. Notwithstanding paragraphs 1 to 4, a contract the subject matter of which is a right in rem in immovable property or a tenancy of immovable property shall be

subject to the requirements of form of the law of the country where the property is situated if by that law:

- (a) those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract; and
- (b) those requirements cannot be derogated from by agreement.

Article 12. Scope of the law applicable

1. The law applicable to a contract by virtue of this Regulation shall govern in particular:

- (a) interpretation;
- (b) performance;
- (c) within the limits of the powers conferred on the court by its procedural law, the consequences of a total or partial breach of obligations, including the assessment of damages in so far as it is governed by rules of law;
- (d) the various ways of extinguishing obligations, and prescription and limitation of actions;
- (e) the consequences of nullity of the contract.

2. In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

Article 13. Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 14. Voluntary assignment and contractual subrogation

1. The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.

2. The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

3. The concept of assignment in this Article includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims.

Article 15. Legal subrogation

Where a person (the creditor) has a contractual claim against another (the debtor) and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether and to what extent the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

Article 16. Multiple liability

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the law governing the debtor's obligation towards the creditor also governs the debtor's right to claim recourse from the other debtors. The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.

Article 17. Set-off

Where the right to set-off is not agreed by the parties, set-off shall be governed by the law applicable to the claim against which the right to set-off is asserted.

Article 18. Burden of proof

1. The law governing a contractual obligation under this Regulation shall apply to the extent that, in matters of contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 11 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

CHAPTER III OTHER PROVISIONS

Article 19. Habitual residence

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.

2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract.

Article 20. Exclusion of renvoi

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law, unless provided otherwise in this Regulation.

Article 21. Public policy of the forum

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 22. States with more than one legal system*

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State where different territorial units have their own rules of law in respect of contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Article 22(2) is omitted by SI 2019/834, reg 10(8).

*Reg 4 of The Law Applicable to Contractual Obligations (Scotland) Regulations 2009 (SSI 2009/410) provides that, notwithstanding Art 22(2), the Regulation with the exception of Art 7 applies in the case of conflicts between (a) the laws of different parts of the UK; or (b) between the laws of one or more parts of the UK and Gibraltar.

Article 23. Relationship with other provisions of Community law

With the exception of Article 7, this Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to contractual obligations.

The heading of Article 23 is amended by SI 2019/834, reg 10(9) to: 'Relationship with other provisions of [retained EU Law]'.

Article 24. Relationship with the Rome Convention

1. This Regulation shall replace the Rome Convention in the Member States, except as regards the territories of the Member States which fall within the territorial scope of that Convention and to which this Regulation does not apply pursuant to Article 299 of the Treaty.

2. In so far as this Regulation replaces the provisions of the Rome Convention, any reference to that Convention shall be understood as a reference to this Regulation.

Article 24 as amended by SI 2019/834, reg 10:

1. This Regulation replaces the [provision made by section 2 of, and Schedule 1 to, the Contracts (Applicable Law) Act 1990.]

2. In so far as this Regulation replaces the [provision made by section 2 of, and Schedule 1 to, the Contracts (Applicable Law) Act 1990], any reference to [the Rome] Convention shall be understood as a reference to this Regulation.

Article 25. Relationship with existing international conventions

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 25 as amended by SI 2019/834, reg 10(11):

1. This Regulation shall not prejudice the application of international conventions to which [the United Kingdom was a party] at the time when this Regulation [was adopted] and which lay down conflict-of-law rules relating to contractual obligations.

2. However, this Regulation shall, as between [relevant states], take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 26. List of Conventions

1. By 17 June 2009, Member States shall notify the Commission of the conventions referred to in Article 25(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the Official Journal of the European Union:

- (a) a list of the conventions referred to in paragraph 1;
- (b) the denunciations referred to in paragraph 1.

Article 26 is omitted by SI 2019/834, reg 10(12).

Article 27. Review clause

1. By 17 June 2013, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the

application of this Regulation. If appropriate, the report shall be accompanied by proposals to amend this Regulation. The report shall include:

- (a) a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any; and
- (b) an evaluation on the application of Article 6, in particular as regards the coherence of Community law in the field of consumer protection.

2. By 17 June 2010, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced.

Article 27 is omitted by SI 2019/834, reg 10(12).

Article 28. Application in time

This Regulation shall apply to contracts concluded as from* 17 December 2009.

CHAPTER IV FINAL PROVISIONS

Article 29. Entry into force and application

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

It shall apply from 17 December 2009 except for Article 26 which shall apply from 17 June 2009.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Article 29 is omitted by SI 2019/834, reg 10(13).

Done at Strasbourg, 17 June 2008.

COUNCIL REGULATION (EU) NO 1259/2010 OF 20 DECEMBER 2010 IMPLEMENTING ENHANCED COOPERATION IN THE AREA OF THE LAW APPLICABLE TO DIVORCE AND LEGAL SEPARATION ('ROME III')

Official Journal L 343, 29/12/2010 pp 10–16

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to Council Decision 2010/405/EU of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation,

Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Parliament,

* *Per* Corrigendum to the Rome I Regulation 13497/1/09, REV 1, JUR 369 [2008 OJ L177].

Having regard to the opinion of the European Economic and Social Committee,
Acting in accordance with a special legislative procedure,

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. For the gradual establishment of such an area, the Union must adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(2) Pursuant to Article 81 of the Treaty on the Functioning of the European Union, those measures are to include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws.

(3) On 14 March 2005 the Commission adopted a Green Paper on applicable law and jurisdiction in divorce matters. The Green Paper launched a wide-ranging public consultation on possible solutions to the problems that may arise under the current situation.

(4) On 17 July 2006 the Commission proposed a Regulation amending Council Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.

(5) At its meeting in Luxembourg on 5 and 6 June 2008, the Council concluded that there was a lack of unanimity on the proposal and that there were insurmountable difficulties that made unanimity impossible both then and in the near future. It established that the proposal's objectives could not be attained within a reasonable period by applying the relevant provisions of the Treaties.

(6) Belgium, Bulgaria, Germany, Greece, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia subsequently addressed a request to the Commission indicating that they intended to establish enhanced cooperation between themselves in the area of applicable law in matrimonial matters. On 3 March 2010, Greece withdrew its request.

(7) On 12 July 2010 the Council adopted Decision 2010/405/EU authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

(8) According to Article 328(1) of the Treaty on the Functioning of the European Union, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions. The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible. This Regulation should be binding in its entirety and directly applicable only in the participating Member States in accordance with the Treaties.

(9) This Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

(10) The substantive scope and enacting terms of this Regulation should be consistent with Regulation (EC) No 2201/2003. However, it should not apply to marriage annulment.

This Regulation should apply only to the dissolution or loosening of marriage ties. The law determined by the conflict-of-laws rules of this Regulation should apply to the grounds for divorce and legal separation.

Preliminary questions such as legal capacity and the validity of the marriage,

and matters such as the effects of divorce or legal separation on property, name, parental responsibility, maintenance obligations or any other ancillary measures should be determined by the conflict-of-laws rules applicable in the participating Member State concerned.

(11) In order to clearly delimit the territorial scope of this Regulation, the Member States participating in the enhanced cooperation should be specified.

(12) This Regulation should be universal, i.e. it should be possible for its uniform conflict-of-laws rules to designate the law of a participating Member State, the law of a non-participating Member State or the law of a State which is not a member of the European Union.

(13) This Regulation should apply irrespective of the nature of the court or tribunal seized. Where applicable, a court should be deemed to be seized in accordance with Regulation (EC) No 2201/2003.

(14) In order to allow the spouses to choose an applicable law with which they have a close connection or, in the absence of such choice, in order that that law might apply to their divorce or legal separation, the law in question should apply even if it is not that of a participating Member State. Where the law of another Member State is designated, the network created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, could play a part in assisting the courts with regard to the content of foreign law.

(15) Increasing the mobility of citizens calls for more flexibility and greater legal certainty. In order to achieve that objective, this Regulation should enhance the parties' autonomy in the areas of divorce and legal separation by giving them a limited possibility to choose the law applicable to their divorce or legal separation.

(16) Spouses should be able to choose the law of a country with which they have a special connection or the law of the forum as the law applicable to divorce and legal separation. The law chosen by the spouses must be consonant with the fundamental rights recognised by the Treaties and the Charter of Fundamental Rights of the European Union.

(17) Before designating the applicable law, it is important for spouses to have access to up-to-date information concerning the essential aspects of national and Union law and of the procedures governing divorce and legal separation. To guarantee such access to appropriate, good-quality information, the Commission regularly updates it in the Internet-based public information system set up by Council Decision 2001/470/EC.

(18) The informed choice of both spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law. The possibility of choosing the applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the participating Member States should be aware of the importance of an informed choice on the part of the two spouses concerning the legal implications of the choice-of-law agreement concluded.

(19) Rules on material and formal validity should be defined so that the informed choice of the spouses is facilitated and that their consent is respected with a view to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned, certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the participating Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal rules, those rules should be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract. If, at the time the agreement is concluded, the spouses are habitually resident in different

participating Member States which lay down different formal rules, compliance with the formal rules of one of these States would suffice. If, at the time the agreement is concluded, only one of the spouses is habitually resident in a participating Member State which lays down additional formal rules, these rules should be complied with.

(20) An agreement designating the applicable law should be able to be concluded and modified at the latest at the time the court is seized, and even during the course of the proceeding if the law of the forum so provides. In that event, it should be sufficient for such designation to be recorded in court in accordance with the law of the forum.

(21) Where no applicable law is chosen, and with a view to guaranteeing legal certainty and predictability and preventing a situation from arising in which one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he considers more favourable to his own interests, this Regulation should introduce harmonised conflict-of-laws rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned. Such connecting factors should be chosen so as to ensure that proceedings relating to divorce or legal separation are governed by a law with which the spouses have a close connection.

(22) Where this Regulation refers to nationality as a connecting factor for the application of the law of a State, the question of how to deal with cases of multiple nationality should be left to national law, in full observance of the general principles of the European Union.

(23) If the court is seized in order to convert a legal separation into divorce, and where the parties have not made any choice as to the law applicable, the law which applied to the legal separation should also apply to the divorce. Such continuity would promote predictability for the parties and increase legal certainty. If the law applied to the legal separation does not provide for the conversion of legal separation into divorce, the divorce should be governed by the conflict-of-laws rules which apply in the absence of a choice by the parties. This should not prevent the spouses from seeking divorce on the basis of other rules in this Regulation.

(24) In certain situations, such as where the applicable law makes no provision for divorce or where it does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the court seized should nevertheless apply. This, however, should be without prejudice to the public policy clause.

(25) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of a provision of foreign law in a given case where it would be manifestly contrary to the public policy of the forum. However, the courts should not be able to apply the public policy exception in order to disregard a provision of the law of another State when to do so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.

(26) Where this Regulation refers to the fact that the law of the participating Member State whose court is seized does not provide for divorce, this should be interpreted to mean that the law of this Member State does not have the institute of divorce. In such a case, the court should not be obliged to pronounce a divorce by virtue of this Regulation.

Where this Regulation refers to the fact that the law of the participating Member State whose court is seized does not deem the marriage in question valid for the purposes of divorce proceedings, this should be interpreted to mean, *inter alia*, that such a marriage does not exist in the law of that Member State. In such a case, the court should not be obliged to pronounce a divorce or a legal separation by virtue of this Regulation.

(27) Since there are States and participating Member States in which two or more systems of law or sets of rules concerning matters governed by this

Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States and participating Member States or to different categories of persons of those States and participating Member States.

(28) In the absence of rules designating the applicable law, parties choosing the law of the State of the nationality of one of them should at the same time indicate which territorial unit's law they have agreed upon in case the State whose law is chosen comprises several territorial units each of which has its own system of law or a set of rules in respect of divorce.

(29) Since the objectives of this Regulation, namely the enhancement of legal certainty, predictability and flexibility in international matrimonial proceedings and hence the facilitation of the free movement of persons within the Union, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale and effects of this Regulation be better achieved at Union level, the Union may adopt measures, by means of enhanced cooperation where appropriate, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(30) This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, and in particular by Article 21 thereof, which states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. This Regulation should be applied by the courts of the participating Member States in observance of those rights and principles,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE, RELATION WITH REGULATION (EC) NO 2201/2003, DEFINITIONS AND UNIVERSAL APPLICATION

Article 1. Scope

1. This Regulation shall apply, in situations involving a conflict of laws, to divorce and legal separation.

2. This Regulation shall not apply to the following matters, even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings:

- (a) the legal capacity of natural persons;
- (b) the existence, validity or recognition of a marriage;
- (c) the annulment of a marriage;
- (d) the name of the spouses;
- (e) the property consequences of the marriage;
- (f) parental responsibility;
- (g) maintenance obligations;
- (h) trusts or successions.

Article 2. Relation with Regulation (EC) No 2201/2003

This Regulation shall not affect the application of Regulation (EC) No 2201/2003.

Article 3. Definitions

For the purposes of this Regulation:

1. 'participating Member State' means a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Decision 2010/405/EU, or by virtue of a decision adopted in accordance

with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union;

2. the term 'court' shall cover all the authorities in the participating Member States with jurisdiction in the matters falling within the scope of this Regulation.

Article 4. Universal application

The law designated by this Regulation shall apply whether or not it is the law of a participating Member State.

CHAPTER II UNIFORM RULES ON THE LAW APPLICABLE TO DIVORCE AND LEGAL SEPARATION

Article 5. Choice of applicable law by the parties

1. The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

- (a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or
- (b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or
- (c) the law of the State of nationality of either spouse at the time the agreement is concluded; or
- (d) the law of the forum.

2. Without prejudice to paragraph 3, an agreement designating the applicable law may be concluded and modified at any time, but at the latest at the time the court is seized.

3. If the law of the forum so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the law of the forum.

Article 6. Consent and material validity

1. The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it under this Regulation if the agreement or term were valid.

2. Nevertheless, a spouse, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence at the time the court is seized if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 7. Formal validity

1. The agreement referred to in Article 5(1) and (2), shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. However, if the law of the participating Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for this type of agreement, those requirements shall apply.

3. If the spouses are habitually resident in different participating Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

4. If only one of the spouses is habitually resident in a participating Member State at the time the agreement is concluded and that State lays down additional formal requirements for this type of agreement, those requirements shall apply.

Article 8. Applicable law in the absence of a choice by the parties

In the absence of a choice pursuant to Article 5, divorce and legal separation shall be subject to the law of the State:

- (a) where the spouses are habitually resident at the time the court is seized; or, failing that
- (b) where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, failing that
- (c) of which both spouses are nationals at the time the court is seized; or, failing that
- (d) where the court is seized.

Article 9. Conversion of legal separation into divorce

1. Where legal separation is converted into divorce, the law applicable to divorce shall be the law applied to the legal separation, unless the parties have agreed otherwise in accordance with Article 5.

2. However, if the law applied to the legal separation does not provide for the conversion of legal separation into divorce, Article 8 shall apply, unless the parties have agreed otherwise in accordance with Article 5.

Article 10. Application of the law of the forum

Where the law applicable pursuant to Article 5 or Article 8 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the forum shall apply.

Article 11. Exclusion of renvoi

Where this Regulation provides for the application of the law of a State, it refers to the rules of law in force in that State other than its rules of private international law.

Article 12. Public policy

Application of a provision of the law designated by virtue of this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

Article 13. Differences in national law

Nothing in this Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation.

Article 14. States with two or more legal systems — territorial conflicts of laws

Where a State comprises several territorial units each of which has its own system of law or a set of rules concerning matters governed by this Regulation:

- (a) any reference to the law of such State shall be construed, for the purposes of determining the law applicable under this Regulation, as referring to the law in force in the relevant territorial unit;
- (b) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
- (c) any reference to nationality shall refer to the territorial unit designated by the law of that State, or, in the absence of relevant rules, to the territorial unit chosen by the parties or, in absence of choice, to the territorial unit with which the spouse or spouses has or have the closest connection.

Article 15. States with two or more legal systems — inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons concerning matters governed by this

Regulation, any reference to the law of such a State shall be construed as referring to the legal system determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the spouse or spouses has or have the closest connection applies.

Article 16. Non-application of this Regulation to internal conflicts of laws

A participating Member State in which different systems of law or sets of rules apply to matters governed by this Regulation shall not be required to apply this Regulation to conflicts of laws arising solely between such different systems of law or sets of rules.

CHAPTER III
OTHER PROVISIONS

Article 17. Information to be provided by participating Member States

1. By 21 September 2011 the participating Member States shall communicate to the Commission their national provisions, if any, concerning:

- (a) the formal requirements applicable to agreements on the choice of applicable law pursuant to Article 7(2) to (4); and
- (b) the possibility of designating the applicable law in accordance with Article 5(3).

The participating Member States shall inform the Commission of any subsequent changes to these provisions.

2. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through appropriate means, in particular through the website of the European Judicial Network in civil and commercial matters.

Article 18. Transitional provisions

1. This Regulation shall apply only to legal proceedings instituted and to agreements of the kind referred to in Article 5 concluded as from 21 June 2012.

However, effect shall also be given to an agreement on the choice of the applicable law concluded before 21 June 2012, provided that it complies with Articles 6 and 7.

2. This Regulation shall be without prejudice to agreements on the choice of applicable law concluded in accordance with the law of a participating Member State whose court is seized before 21 June 2012.

Article 19. Relationship with existing international conventions

1. Without prejudice to the obligations of the participating Member States pursuant to Article 351 of the Treaty on the Functioning of the European Union, this Regulation shall not affect the application of international conventions to which one or more participating Member States are party at the time when this Regulation is adopted or when the decision pursuant to the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union is adopted and which lay down conflict-of-laws rules relating to divorce or separation.

2. However, this Regulation shall, as between participating Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 20. Review clause

1. By 31 December 2015, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, where appropriate, by proposals to adapt this Regulation.

2. To that end, the participating Member States shall communicate to the Commission the relevant information on the application of this Regulation by their courts.

CHAPTER IV
FINAL PROVISIONS

Article 21. Entry into force and date of application

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Union.

It shall apply from 21 June 2012, with the exception of Article 17, which shall apply from 21 June 2011.

For those participating Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union, this Regulation shall apply as from the date indicated in the decision concerned.

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

Done at Brussels, 20 December 2010.

**REGULATION (EU) NO 650/2012 OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL OF 4 JULY 2012 ON JURISDICTION, APPLICABLE LAW,
RECOGNITION AND ENFORCEMENT OF DECISIONS AND ACCEPTANCE
AND ENFORCEMENT OF AUTHENTIC INSTRUMENTS IN MATTERS OF
SUCCESSION AND ON THE CREATION OF A EUROPEAN CERTIFICATE
OF SUCCESSION**

Official Journal L 201, 27/07/2012 pp 107–134

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(2) In accordance with point (c) of Article 81(2) of the Treaty on the Functioning of the European Union, such measures may include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.

(4) A programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, common to the Commission and to the Council, was adopted on 30 November 2000. That programme identifies measures relating to the harmonisation of conflict-of-laws rules as

measures facilitating the mutual recognition of decisions, and provides for the drawing-up of an instrument relating to wills and succession.

(5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called 'The Hague Programme: strengthening freedom, security and justice in the European Union'. That programme underlines the need to adopt an instrument in matters of succession dealing, in particular, with the questions of conflict of laws, jurisdiction, mutual recognition and enforcement of decisions in the area of succession and a European Certificate of Succession.

(6) At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called 'The Stockholm Programme – An open and secure Europe serving and protecting citizens'. In that programme the European Council considered that mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example succession and wills, while taking into consideration Member States' legal systems, including public policy (*ordre public*), and national traditions in this area.

(7) The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.

(8) In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, on applicable law, on recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements and on the creation of a European Certificate of Succession.

(9) The scope of this Regulation should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession.

(10) This Regulation should not apply to revenue matters or to administrative matters of a public-law nature. It should therefore be for national law to determine, for instance, how taxes and other liabilities of a public-law nature are calculated and paid, whether these be taxes payable by the deceased at the time of death or any type of succession-related tax to be paid by the estate or the beneficiaries. It should also be for national law to determine whether the release of succession property to beneficiaries under this Regulation or the recording of succession property in a register may be made subject to the payment of taxes.

(11) This Regulation should not apply to areas of civil law other than succession. For reasons of clarity, a number of questions which could be seen as having a link with matters of succession should be explicitly excluded from the scope of this Regulation.

(12) Accordingly, this Regulation should not apply to questions relating to matrimonial property regimes, including marriage settlements as known in some legal systems to the extent that such settlements do not deal with succession matters, and property regimes of relationships deemed to have comparable effects to marriage. The authorities dealing with a given succession under this Regulation should nevertheless, depending on the situation, take into account the winding-up of the matrimonial property regime or similar property regime of the deceased when determining the estate of the deceased and the respective shares of the beneficiaries.

(13) Questions relating to the creation, administration and dissolution of trusts should also be excluded from the scope of this Regulation. This should not be understood as a general exclusion of trusts. Where a trust is created under a will or under statute in connection with intestate succession the law applicable to the

succession under this Regulation should apply with respect to the devolution of the assets and the determination of the beneficiaries.

(14) Property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, should also be excluded from the scope of this Regulation. However, it should be the law specified by this Regulation as the law applicable to the succession which determines whether gifts or other forms of dispositions *inter vivos* giving rise to a right in rem prior to death should be restored or accounted for for the purposes of determining the shares of the beneficiaries in accordance with the law applicable to the succession.

(15) This Regulation should allow for the creation or the transfer by succession of a right in immovable or movable property as provided for in the law applicable to the succession. It should, however, not affect the limited number ('*numerus clausus*') of rights in rem known in the national law of some Member States. A Member State should not be required to recognise a right in rem relating to property located in that Member State if the right in rem in question is not known in its law.

(16) However, in order to allow the beneficiaries to enjoy in another Member State the rights which have been created or transferred to them by succession, this Regulation should provide for the adaptation of an unknown right in rem to the closest equivalent right in rem under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right in rem and the effects attached to it. For the purposes of determining the closest equivalent national right in rem, the authorities or competent persons of the State whose law applied to the succession may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.

(17) The adaptation of unknown rights in rem as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.

(18) The requirements for the recording in a register of a right in immovable or movable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of the deceased to the succession property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents drawn up in another Member State by the competent authorities whose circulation is provided for by this Regulation. In particular, the European Certificate of Succession issued under this Regulation should constitute a valid document for the recording of succession property in a register of a Member State. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.

(19) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member

State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the erga omnes effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.

(20) This Regulation should respect the different systems for dealing with matters of succession applied in the Member States. For the purposes of this Regulation, the term 'court' should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of succession, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term 'court' should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of succession, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.

(21) This Regulation should allow all notaries who have competence in matters of succession in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term 'court' for the purposes of this Regulation.

(22) Acts issued by notaries in matters of succession in the Member States should circulate under this Regulation. When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they are not bound by the rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.

(23) In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death. In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection with the State concerned taking into account the specific aims of this Regulation.

(24) In certain cases, determining the deceased's habitual residence may prove complex. Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located. Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.

(25) With regard to the determination of the law applicable to the succession the authority dealing with the succession may in exceptional cases – where, for instance, the deceased had moved to the State of his habitual residence fairly recently before his death and all the circumstances of the case indicate that he was manifestly more closely connected with another State – arrive at the conclusion that the law applicable to the succession should not be the law of the State of the habitual residence of the deceased but rather the law of the State with which the deceased was manifestly more closely connected. That manifestly closest connection should, however, not be resorted to as a subsidiary connecting factor whenever the determination of the habitual residence of the deceased at the time of death proves complex.

(26) Nothing in this Regulation should prevent a court from applying mechanisms designed to tackle the evasion of the law, such as *fraude à la loi* in the context of private international law.

(27) The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore provides for a series of mechanisms which would come into play where the deceased had chosen as the law to govern his succession the law of a Member State of which he was a national.

(28) One such mechanism should be to allow the parties concerned to conclude a choice-of-court agreement in favour of the courts of the Member State of the chosen law. It would have to be determined on a case-by-case basis, depending in particular on the issue covered by the choice-of-court agreement, whether the agreement would have to be concluded between all parties concerned by the succession or whether some of them could agree to bring a specific issue before the chosen court in a situation where the decision by that court on that issue would not affect the rights of the other parties to the succession.

(29) If succession proceedings are opened by a court of its own motion, as is the case in certain Member States, that court should close the proceedings if the parties agree to settle the succession amicably out of court in the Member State of the chosen law. Where succession proceedings are not opened by a court of its own motion, this Regulation should not prevent the parties from settling the succession amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the succession is not the law of that Member State.

(30) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the succession of persons not habitually resident in a Member State at the time of death, this Regulation should list exhaustively, in a hierarchical order, the grounds on which such subsidiary jurisdiction may be exercised.

(31) In order to remedy, in particular, situations of denial of justice, this Regulation should provide a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on a succession which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a beneficiary cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on *forum necessitatis* should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.

(32) In order to simplify the lives of heirs and legatees habitually resident in a Member State other than that in which the succession is being or will be dealt with, this Regulation should allow any person entitled under the law applicable to the succession to make declarations concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or concerning the limitation of his liability for the debts under the succession, to make such declarations in the form

provided for by the law of the Member State of his habitual residence before the courts of that Member State. This should not preclude such declarations being made before other authorities in that Member State which are competent to receive declarations under national law. Persons choosing to avail themselves of the possibility to make declarations in the Member State of their habitual residence should themselves inform the court or authority which is or will be dealing with the succession of the existence of such declarations within any time limit set by the law applicable to the succession.

(33) It should not be possible for a person who wishes to limit his liability for the debts under the succession to do so by a mere declaration to that effect before the courts or other competent authorities of the Member State of his habitual residence where the law applicable to the succession requires him to initiate specific legal proceedings, for instance inventory proceedings, before the competent court. A declaration made in such circumstances by a person in the Member State of his habitual residence in the form provided for by the law of that Member State should therefore not be formally valid for the purposes of this Regulation. Nor should the documents instituting the legal proceedings be regarded as declarations for the purposes of this Regulation.

(34) In the interests of the harmonious functioning of justice, the giving of irreconcilable decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters.

(35) One such procedural rule is a *lis pendens* rule which will come into play if the same succession case is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the succession case.

(36) Given that succession matters in some Member States may be dealt with by non-judicial authorities, such as notaries, who are not bound by the rules of jurisdiction under this Regulation, it cannot be excluded that an amicable out-of-court settlement and court proceedings relating to the same succession, or two amicable out-of-court settlements relating to the same succession, may be initiated in parallel in different Member States. In such a situation, it should be for the parties involved, once they become aware of the parallel proceedings, to agree among themselves how to proceed. If they cannot agree, the succession would have to be dealt with and decided upon by the courts having jurisdiction under this Regulation.

(37) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable them to know in advance which law will apply to their succession. Harmonised conflict-of-laws rules should be introduced in order to avoid contradictory results. The main rule should ensure that the succession is governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid the fragmentation of the succession, that law should govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.

(38) This Regulation should enable citizens to organise their succession in advance by choosing the law applicable to their succession. That choice should be limited to the law of a State of their nationality in order to ensure a connection between the deceased and the law chosen and to avoid a law being chosen with the intention of frustrating the legitimate expectations of persons entitled to a reserved share.

(39) A choice of law should be made expressly in a declaration in the form of a disposition of property upon death or be demonstrated by the terms of such a disposition. A choice of law could be regarded as demonstrated by a disposition of property upon death where, for instance, the deceased had referred in his

disposition to specific provisions of the law of the State of his nationality or where he had otherwise mentioned that law.

(40) A choice of law under this Regulation should be valid even if the chosen law does not provide for a choice of law in matters of succession. It should however be for the chosen law to determine the substantive validity of the act of making the choice, that is to say, whether the person making the choice may be considered to have understood and consented to what he was doing. The same should apply to the act of modifying or revoking a choice of law.

(41) For the purposes of the application of this Regulation, the determination of the nationality or the multiple nationalities of a person should be resolved as a preliminary question. The issue of considering a person as a national of a State falls outside the scope of this Regulation and is subject to national law, including, where applicable, international Conventions, in full observance of the general principles of the European Union.

(42) The law determined as the law applicable to the succession should govern the succession from the opening of the succession to the transfer of ownership of the assets forming part of the estate to the beneficiaries as determined by that law. It should include questions relating to the administration of the estate and to liability for the debts under the succession. The payment of the debts under the succession may, depending, in particular, on the law applicable to the succession, include the taking into account of a specific ranking of the creditors.

(43) The rules of jurisdiction laid down by this Regulation may, in certain cases, lead to a situation where the court having jurisdiction to rule on the succession will not be applying its own law. When that situation occurs in a Member State whose law provides for the mandatory appointment of an administrator of the estate, this Regulation should allow the courts of that Member State, when seised, to appoint one or more such administrators under their own law. This should be without prejudice to any choice made by the parties to settle the succession amicably out of court in another Member State where this is possible under the law of that Member State. In order to ensure a smooth coordination between the law applicable to the succession and the law of the Member State of the appointing court, the court should appoint the person(s) who would be entitled to administer the estate under the law applicable to the succession, such as for instance the executor of the will of the deceased or the heirs themselves or, if the law applicable to the succession so requires, a third-party administrator. The courts may, however, in specific cases where their law so requires, appoint a third party as administrator even if this is not provided for in the law applicable to the succession. If the deceased had appointed an executor of the will, that person may not be deprived of his powers unless the law applicable to the succession allows for the termination of his mandate.

(44) The powers exercised by the administrators appointed in the Member State of the court seised should be the powers of administration which they may exercise under the law applicable to the succession. Thus, if, for instance, the heir is appointed as administrator he should have the powers to administer the estate which an heir would have under that law. Where the powers of administration which may be exercised under the law applicable to the succession are not sufficient to preserve the assets of the estate or to protect the rights of the creditors or of other persons having guaranteed the debts of the deceased, the administrator(s) appointed in the Member State of the court seised may, on a residual basis, exercise powers of administration to that end provided for by the law of that Member State. Such residual powers could include, for instance, establishing a list of the assets of the estate and the debts under the succession, informing creditors of the opening of the succession and inviting them to make their claims known, and taking any provisional, including protective, measures intended to preserve the assets of the estate. The acts performed by an administrator in exercise of the residual powers should respect the law applicable to the succession as regards the

transfer of ownership of succession property, including any transaction entered into by the beneficiaries prior to the appointment of the administrator, liability for the debts under the succession and the rights of the beneficiaries, including, where applicable, the right to accept or to waive the succession. Such acts could, for instance, only entail the alienation of assets or the payment of debts where this would be allowed under the law applicable to the succession. Where under the law applicable to the succession the appointment of a third-party administrator changes the liability of the heirs, such a change of liability should be respected.

(45) This Regulation should not preclude creditors, for instance through a representative, from taking such further steps as may be available under national law, where applicable, in accordance with the relevant Union instruments, in order to safeguard their rights.

(46) This Regulation should allow for potential creditors in other Member States where assets are located to be informed of the opening of the succession. In the context of the application of this Regulation, consideration should therefore be given to the possibility of establishing a mechanism, if appropriate by way of the e-Justice portal, to enable potential creditors in other Member States to access the relevant information so that they can make their claims known.

(47) The law applicable to the succession should determine who the beneficiaries are in any given succession. Under most laws, the term 'beneficiaries' would cover heirs and legatees and persons entitled to a reserved share although, for instance, the legal position of legatees is not the same under all laws. Under some laws, the legatee may receive a direct share in the estate whereas under other laws the legatee may acquire only a claim against the heirs.

(48) In order to ensure legal certainty for persons wishing to plan their succession in advance, this Regulation should lay down a specific conflict-of-laws rule concerning the admissibility and substantive validity of dispositions of property upon death. To ensure the uniform application of that rule, this Regulation should list which elements should be considered as elements pertaining to substantive validity. The examination of the substantive validity of a disposition of property upon death may lead to the conclusion that that disposition is without legal existence.

(49) An agreement as to succession is a type of disposition of property upon death the admissibility and acceptance of which vary among the Member States. In order to make it easier for succession rights acquired as a result of an agreement as to succession to be accepted in the Member States, this Regulation should determine which law is to govern the admissibility of such agreements, their substantive validity and their binding effects between the parties, including the conditions for their dissolution.

(50) The law which, under this Regulation, will govern the admissibility and substantive validity of a disposition of property upon death and, as regards agreements as to succession, the binding effects of such an agreement as between the parties, should be without prejudice to the rights of any person who, under the law applicable to the succession, has a right to a reserved share or another right of which he cannot be deprived by the person whose estate is involved.

(51) Where reference is made in this Regulation to the law which would have been applicable to the succession of the person making a disposition of property upon death if he had died on the day on which the disposition was, as the case may be, made, modified or revoked, such reference should be understood as a reference to either the law of the State of the habitual residence of the person concerned on that day or, if he had made a choice of law under this Regulation, the law of the State of his nationality on that day.

(52) This Regulation should regulate the validity as to form of all dispositions of property upon death made in writing by way of rules which are consistent with those of the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. When determining whether a given disposition of property upon death is formally valid under this Regulation, the

competent authority should disregard the fraudulent creation of an international element to circumvent the rules on formal validity.

(53) For the purposes of this Regulation, any provision of law limiting the permitted forms of dispositions of property upon death by reference to certain personal qualifications of the person making the disposition, such as, for instance, his age, should be deemed to pertain to matters of form. This should not be interpreted as meaning that the law applicable to the formal validity of a disposition of property upon death under this Regulation should determine whether or not a minor has the capacity to make a disposition of property upon death. That law should only determine whether a personal qualification such as, for instance, minority should bar a person from making a disposition of property upon death in a certain form.

(54) For economic, family or social considerations, certain immovable property, certain enterprises and other special categories of assets are subject to special rules in the Member State in which they are located imposing restrictions concerning or affecting the succession in respect of those assets. This Regulation should ensure the application of such special rules. However, this exception to the application of the law applicable to the succession requires a strict interpretation in order to remain compatible with the general objective of this Regulation. Therefore, neither conflict-of-laws rules subjecting immovable property to a law different from that applicable to movable property nor provisions providing for a reserved share of the estate greater than that provided for in the law applicable to the succession under this Regulation may be regarded as constituting special rules imposing restrictions concerning or affecting the succession in respect of certain assets.

(55) To ensure uniform handling of a situation in which it is uncertain in what order two or more persons whose succession would be governed by different laws died, this Regulation should lay down a rule providing that none of the deceased persons is to have any rights in the succession of the other or others.

(56) In some situations an estate may be left without a claimant. Different laws provide differently for such situations. Under some laws, the State will be able to claim the vacant estate as an heir irrespective of where the assets are located. Under some other laws, the State will be able to appropriate only the assets located on its territory. This Regulation should therefore lay down a rule providing that the application of the law applicable to the succession should not preclude a Member State from appropriating under its own law the assets located on its territory. However, to ensure that this rule is not detrimental to the creditors of the estate, a proviso should be added enabling the creditors to seek satisfaction of their claims out of all the assets of the estate, irrespective of their location.

(57) The conflict-of-laws rules laid down in this Regulation may lead to the application of the law of a third State. In such cases regard should be had to the private international law rules of that State. If those rules provide for renvoi either to the law of a Member State or to the law of a third State which would apply its own law to the succession, such renvoi should be accepted in order to ensure international consistency. Renvoi should, however, be excluded in situations where the deceased had made a choice of law in favour of the law of a third State.

(58) Considerations of public interest should allow courts and other competent authorities dealing with matters of succession in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (*ordre public*) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public-policy exception in order to set aside the law of another State or to refuse to recognise or, as the case may be, accept or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.

(59) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of succession, irrespective of whether such decisions were given in contentious or non-contentious proceedings, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.

(60) In order to take into account the different systems for dealing with matters of succession in the Member States, this Regulation should guarantee the acceptance and enforceability in all Member States of authentic instruments in matters of succession.

(61) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.

(62) The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.

(63) The term 'the legal acts or legal relationships recorded in an authentic instrument' should be interpreted as referring to the contents as to substance recorded in the authentic instrument. The legal acts recorded in an authentic instrument could be, for instance, the agreement between the parties on the sharing-out or the distribution of the estate, or a will or an agreement as to succession, or another declaration of intent. The legal relationships could be, for instance, the determination of the heirs and other beneficiaries as established under the law applicable to the succession, their respective shares and the existence of a reserved share, or any other element established under the law applicable to the succession. A party wishing to challenge the legal acts or legal relationships recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the succession.

(64) If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.

(65) An authentic instrument which is being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.

(66) Should an authority, in the application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority, taking into account

the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation, or, where the question is raised as an incidental question in the course of proceedings, by the court seised of those proceedings. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.

(67) In order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs, legatees, executors of the will or administrators of the estate should be able to demonstrate easily their status and/or rights and powers in another Member State, for instance in a Member State in which succession property is located. To enable them to do so, this Regulation should provide for the creation of a uniform certificate, the European Certificate of Succession (hereinafter referred to as 'the Certificate'), to be issued for use in another Member State. In order to respect the principle of subsidiarity, the Certificate should not take the place of internal documents which may exist for similar purposes in the Member States.

(68) The authority which issues the Certificate should have regard to the formalities required for the registration of immovable property in the Member State in which the register is kept. For that purpose, this Regulation should provide for an exchange of information on such formalities between the Member States.

(69) The use of the Certificate should not be mandatory. This means that persons entitled to apply for a Certificate should be under no obligation to do so but should be free to use the other instruments available under this Regulation (decisions, authentic instruments and court settlements). However, no authority or person presented with a Certificate issued in another Member State should be entitled to request that a decision, authentic instrument or court settlement be presented instead of the Certificate.

(70) The Certificate should be issued in the Member State whose courts have jurisdiction under this Regulation. It should be for each Member State to determine in its internal legislation which authorities are to have competence to issue the Certificate, whether they be courts as defined for the purposes of this Regulation or other authorities with competence in matters of succession, such as, for instance, notaries. It should also be for each Member State to determine in its internal legislation whether the issuing authority may involve other competent bodies in the issuing process, for instance bodies competent to receive statutory declarations in lieu of an oath. The Member States should communicate to the Commission the relevant information concerning their issuing authorities in order for that information to be made publicly available.

(71) The Certificate should produce the same effects in all Member States. It should not be an enforceable title in its own right but should have an evidentiary effect and should be presumed to demonstrate accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements, such as the substantive validity of dispositions of property upon death. The evidentiary effect of the Certificate should not extend to elements which are not governed by this Regulation, such as questions of affiliation or the question whether or not a particular asset belonged to the deceased. Any person who makes payments or passes on succession property to a person indicated in the Certificate as being entitled to accept such payment or property as an heir or legatee should be afforded appropriate protection if he acted in good faith relying on the accuracy of the information certified in the Certificate. The same protection should be afforded to any person who, relying on the accuracy of the information certified in the Certificate, buys or receives succession property from a person indicated in the Certificate as being entitled to dispose of such property. The protection should be ensured if certified copies which are still valid

are presented. Whether or not such an acquisition of property by a third person is effective should not be determined by this Regulation.

(72) The competent authority should issue the Certificate upon request. The original of the Certificate should remain with the issuing authority, which should issue one or more certified copies of the Certificate to the applicant and to any other person demonstrating a legitimate interest. This should not preclude a Member State, in accordance with its national rules on public access to documents, from allowing copies of the Certificate to be disclosed to members of the public. This Regulation should provide for redress against decisions of the issuing authority, including decisions to refuse the issue of a Certificate. Where the Certificate is rectified, modified or withdrawn, the issuing authority should inform the persons to whom certified copies have been issued so as to avoid wrongful use of such copies.

(73) Respect for international commitments entered into by the Member States means that this Regulation should not affect the application of international conventions to which one or more Member States are party at the time when this Regulation is adopted. In particular, the Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions should be able to continue to apply the provisions of that Convention instead of the provisions of this Regulation with regard to the formal validity of wills and joint wills. Consistency with the general objectives of this Regulation requires, however, that this Regulation take precedence, as between Member States, over conventions concluded exclusively between two or more Member States in so far as such conventions concern matters governed by this Regulation.

(74) This Regulation should not preclude Member States which are parties to the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration from continuing to apply certain provisions of that Convention, as revised by the intergovernmental agreement between the States parties thereto.

(75) In order to facilitate the application of this Regulation, provision should be made for an obligation requiring the Member States to communicate certain information regarding their legislation and procedures relating to succession within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC. In order to allow for the timely publication in the Official Journal of the European Union of all information of relevance for the practical application of this Regulation, the Member States should also communicate such information to the Commission before this Regulation starts to apply.

(76) Equally, to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be prescribed for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, authentic instrument or court settlement and for the application for a European Certificate of Succession, as well as for the Certificate itself.

(77) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits should apply.

(78) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments and to the European Certificate of Succession. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the

rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

(79) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation in accordance with the procedure laid down in Article 4 of Regulation (EU) No 182/2011.

(80) Since the objectives of this Regulation, namely the free movement of persons, the organisation in advance by citizens of their succession in a Union context and the protection of the rights of heirs and legatees and of persons close to the deceased, as well as of the creditors of the succession, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(81) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. This Regulation must be applied by the courts and other competent authorities of the Member States in observance of those rights and principles.

(82) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom and Ireland of notifying their intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.

(83) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I SCOPE AND DEFINITIONS

Article 1. Scope

1. This Regulation shall apply to succession to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

(a) the status of natural persons, as well as family relationships and relationships deemed by the law applicable to such relationships to have comparable effects;

(b) the legal capacity of natural persons, without prejudice to point (c) of Article 23(2) and to Article 26;

(c) questions relating to the disappearance, absence or presumed death of a natural person;

(d) questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;

(e) maintenance obligations other than those arising by reason of death;

(f) the formal validity of dispositions of property upon death made orally;

(g) property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, joint ownership with a right of

survivorship, pension plans, insurance contracts and arrangements of a similar nature, without prejudice to point (i) of Article 23(2);

(h) questions governed by the law of companies and other bodies, corporate or unincorporated, such as clauses in the memoranda of association and articles of association of companies and other bodies, corporate or unincorporated, which determine what will happen to the shares upon the death of the members;

(i) the dissolution, extinction and merger of companies and other bodies, corporate or unincorporated;

(j) the creation, administration and dissolution of trusts;

(k) the nature of rights in rem; and

(l) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

Article 2. Competence in matters of succession within the Member States

This Regulation shall not affect the competence of the authorities of the Member States to deal with matters of succession.

Article 3. Definitions

1. For the purposes of this Regulation:

(a) ‘succession’ means succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession;

(b) ‘agreement as to succession’ means an agreement, including an agreement resulting from mutual wills, which, with or without consideration, creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement;

(c) ‘joint will’ means a will drawn up in one instrument by two or more persons;

(d) ‘disposition of property upon death’ means a will, a joint will or an agreement as to succession;

(e) ‘Member State of origin’ means the Member State in which the decision has been given, the court settlement approved or concluded, the authentic instrument established or the European Certificate of Succession issued;

(f) ‘Member State of enforcement’ means the Member State in which the declaration of enforceability or the enforcement of the decision, court settlement or authentic instrument is sought;

(g) ‘decision’ means any decision in a matter of succession given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court;

(h) ‘court settlement’ means a settlement in a matter of succession which has been approved by a court or concluded before a court in the course of proceedings;

(i) ‘authentic instrument’ means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

(i) relates to the signature and the content of the authentic instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin.

2. For the purposes of this Regulation, the term ‘court’ means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with

regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:

- (a) may be made the subject of an appeal to or review by a judicial authority; and
- (b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 79.

CHAPTER II JURISDICTION

Article 4. General jurisdiction

The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.

Article 5. Choice-of-court agreement

1. Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.

2. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

Article 6. Declining of jurisdiction in the event of a choice of law

Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:

- (a) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets; or
- (b) shall decline jurisdiction if the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of the Member State of the chosen law.

Article 7. Jurisdiction in the event of a choice of law

The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:

- (a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6;
- (b) the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of that Member State; or
- (c) the parties to the proceedings have expressly accepted the jurisdiction of the court seised.

Article 8. Closing of own-motion proceedings in the event of a choice of law

A court which has opened succession proceedings of its own motion under Article 4 or Article 10 shall close the proceedings if the parties to the proceedings have agreed to settle the succession amicably out of court in the Member State whose law had been chosen by the deceased pursuant to Article 22.

Article 9. Jurisdiction based on appearance

1. Where, in the course of proceedings before a court of a Member State exercising jurisdiction pursuant to Article 7, it appears that not all the parties to those proceedings were party to the choice-of-court agreement, the court shall continue

to exercise jurisdiction if the parties to the proceedings who were not party to the agreement enter an appearance without contesting the jurisdiction of the court.

2. If the jurisdiction of the court referred to in paragraph 1 is contested by parties to the proceedings who were not party to the agreement, the court shall decline jurisdiction.

In that event, jurisdiction to rule on the succession shall lie with the courts having jurisdiction pursuant to Article 4 or Article 10.

Article 10. Subsidiary jurisdiction

1. Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:

(a) the deceased had the nationality of that Member State at the time of death; or, failing that,

(b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

2. Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.

Article 11. Forum necessitatis

Where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised.

Article 12. Limitation of proceedings

1. Where the estate of the deceased comprises assets located in a third State, the court seised to rule on the succession may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.

2. Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.

Article 13. Acceptance or waiver of the succession, of a legacy or of a reserved share

In addition to the court having jurisdiction to rule on the succession pursuant to this Regulation, the courts of the Member State of the habitual residence of any person who, under the law applicable to the succession, may make, before a court, a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession, shall have jurisdiction to receive such declarations where, under the law of that Member State, such declarations may be made before a court.

Article 14. Seising of a court

For the purposes of this Chapter, a court shall be deemed to be 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 he was required to take to have service effected on the defendant;

(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 he was required to take to have the document lodged with the court; or

(c) if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

Article 15. Examination as to jurisdiction

Where a court of a Member State is seised of a succession matter over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 16. Examination as to admissibility

1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to that end.

2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 17. Lis pendens

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 18. Related actions

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where those actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings.

Article 19. Provisional, including protective, measures

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III
APPLICABLE LAW

Article 20. Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Article 21. General rule

1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

2. Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.

Article 22. Choice of law

1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.

2. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.

3. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.

4. Any modification or revocation of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death.

Article 23. The scope of the applicable law

1. The law determined pursuant to Article 21 or Article 22 shall govern the succession as a whole.

2. That law shall govern in particular:

- (a) the causes, time and place of the opening of the succession;
- (b) the determination of the beneficiaries, of their respective shares and of the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner;
- (c) the capacity to inherit;
- (d) disinheritance and disqualification by conduct;
- (e) the transfer to the heirs and, as the case may be, to the legatees of the assets, rights and obligations forming part of the estate, including the conditions and effects of the acceptance or waiver of the succession or of a legacy;
- (f) the powers of the heirs, the executors of the wills and other administrators of the estate, in particular as regards the sale of property and the payment of creditors, without prejudice to the powers referred to in Article 29(2) and (3);
- (g) liability for the debts under the succession;
- (h) the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs;
- (i) any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and
- (j) the sharing-out of the estate.

Article 24. Dispositions of property upon death other than agreements as to succession

1. A disposition of property upon death other than an agreement as to succession shall be governed, as regards its admissibility and substantive validity, by the law which, under this Regulation, would have been applicable to the succession of the person who made the disposition if he had died on the day on which the disposition was made.

2. Notwithstanding paragraph 1, a person may choose as the law to govern his disposition of property upon death, as regards its admissibility and substantive validity, the law which that person could have chosen in accordance with Article 22 on the conditions set out therein.

3. Paragraph 1 shall apply, as appropriate, to the modification or revocation of a disposition of property upon death other than an agreement as to succession. In the event of a choice of law in accordance with paragraph 2, the modification or revocation shall be governed by the chosen law.

Article 25. Agreements as to succession

1. An agreement as to succession regarding the succession of one person shall be governed, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law which, under this Regulation, would have been applicable to the succession of that person if he had died on the day on which the agreement was concluded.

2. An agreement as to succession regarding the succession of several persons shall be admissible only if it is admissible under all the laws which, under this Regulation, would have governed the succession of all the persons involved if they had died on the day on which the agreement was concluded.

An agreement as to succession which is admissible pursuant to the first subparagraph shall be governed, as regards its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law, from among those referred to in the first subparagraph, with which it has the closest connection.

3. Notwithstanding paragraphs 1 and 2, the parties may choose as the law to govern their agreement as to succession, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, the law which the person or one of the persons whose estate is involved could have chosen in accordance with Article 22 on the conditions set out therein.

Article 26. Substantive validity of dispositions of property upon death

1. For the purposes of Articles 24 and 25 the following elements shall pertain to substantive validity:

- (a) the capacity of the person making the disposition of property upon death to make such a disposition;
- (b) the particular causes which bar the person making the disposition from disposing in favour of certain persons or which bar a person from receiving succession property from the person making the disposition;
- (c) the admissibility of representation for the purposes of making a disposition of property upon death;
- (d) the interpretation of the disposition;
- (e) fraud, duress, mistake and any other questions relating to the consent or intention of the person making the disposition.

2. Where a person has the capacity to make a disposition of property upon death under the law applicable pursuant to Article 24 or Article 25, a subsequent change of the law applicable shall not affect his capacity to modify or revoke such a disposition.

Article 27. Formal validity of dispositions of property upon death made in writing

1. A disposition of property upon death made in writing shall be valid as regards form if its form complies with the law:

(a) of the State in which the disposition was made or the agreement as to succession concluded;

(b) of a State whose nationality the testator or at least one of the persons whose succession is concerned by an agreement as to succession possessed, either at the time when the disposition was made or the agreement concluded, or at the time of death;

(c) of a State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his domicile, either at the time when the disposition was made or the agreement concluded, or at the time of death;

(d) of the State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his habitual residence, either at the time when the disposition was made or the agreement concluded, or at the time of death; or

(e) in so far as immovable property is concerned, of the State in which that property is located.

The determination of the question whether or not the testator or any person whose succession is concerned by the agreement as to succession had his domicile in a particular State shall be governed by the law of that State.

2. Paragraph 1 shall also apply to dispositions of property upon death modifying or revoking an earlier disposition. The modification or revocation shall also be valid as regards form if it complies with any one of the laws according to the terms of which, under paragraph 1, the disposition of property upon death which has been modified or revoked was valid.

3. For the purposes of this Article, any provision of law which limits the permitted forms of dispositions of property upon death by reference to the age, nationality or other personal conditions of the testator or of the persons whose succession is concerned by an agreement as to succession shall be deemed to pertain to matters of form. The same rule shall apply to the qualifications to be possessed by any witnesses required for the validity of a disposition of property upon death.

Article 28. Validity as to form of a declaration concerning acceptance or waiver

A declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person making the declaration, shall be valid as to form where it meets the requirements of:

(a) the law applicable to the succession pursuant to Article 21 or Article 22; or

(b) the law of the State in which the person making the declaration has his habitual residence.

Article 29. Special rules on the appointment and powers of an administrator of the estate in certain situations

1. Where the appointment of an administrator is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation and the law applicable to the succession is a foreign law, the courts of that Member State may, when seised, appoint one or more administrators of the estate under their own law, subject to the conditions laid down in this Article.

The administrator(s) appointed pursuant to this paragraph shall be the person(s) entitled to execute the will of the deceased and/or to administer the estate under the law applicable to the succession. Where that law does not provide for the

administration of the estate by a person who is not a beneficiary, the courts of the Member State in which the administrator is to be appointed may appoint a third-party administrator under their own law if that law so requires and there is a serious conflict of interests between the beneficiaries or between the beneficiaries and the creditors or other persons having guaranteed the debts of the deceased, a disagreement amongst the beneficiaries on the administration of the estate or a complex estate to administer due to the nature of the assets.

The administrator(s) appointed pursuant to this paragraph shall be the only person(s) entitled to exercise the powers referred to in paragraph 2 or 3.

2. The person(s) appointed as administrator(s) pursuant to paragraph 1 shall exercise the powers to administer the estate which he or they may exercise under the law applicable to the succession. The appointing court may, in its decision, lay down specific conditions for the exercise of such powers in accordance with the law applicable to the succession.

Where the law applicable to the succession does not provide for sufficient powers to preserve the assets of the estate or to protect the rights of the creditors or of other persons having guaranteed the debts of the deceased, the appointing court may decide to allow the administrator(s) to exercise, on a residual basis, the powers provided for to that end by its own law and may, in its decision, lay down specific conditions for the exercise of such powers in accordance with that law.

When exercising such residual powers, however, the administrator(s) shall respect the law applicable to the succession as regards the transfer of ownership of succession property, liability for the debts under the succession, the rights of the beneficiaries, including, where applicable, the right to accept or to waive the succession, and, where applicable, the powers of the executor of the will of the deceased.

3. Notwithstanding paragraph 2, the court appointing one or more administrators pursuant to paragraph 1 may, by way of exception, where the law applicable to the succession is the law of a third State, decide to vest in those administrators all the powers of administration provided for by the law of the Member State in which they are appointed.

When exercising such powers, however, the administrators shall respect, in particular, the determination of the beneficiaries and their succession rights, including their rights to a reserved share or claim against the estate or the heirs under the law applicable to the succession.

Article 30. Special rules imposing restrictions concerning or affecting the succession in respect of certain assets

Where the law of the State in which certain immovable property, certain enterprises or other special categories of assets are located contains special rules which, for economic, family or social considerations, impose restrictions concerning or affecting the succession in respect of those assets, those special rules shall apply to the succession in so far as, under the law of that State, they are applicable irrespective of the law applicable to the succession.

Article 31. Adaptation of rights in rem

Where a person invokes a right in rem to which he is entitled under the law applicable to the succession and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.

Article 32. Commorientes

Where two or more persons whose successions are governed by different laws die in circumstances in which it is uncertain in what order their deaths occurred, and where those laws provide differently for that situation or make no provision for it

at all, none of the deceased persons shall have any rights to the succession of the other or others.

Article 33. Estate without a claimant

To the extent that, under the law applicable to the succession pursuant to this Regulation, there is no heir or legatee for any assets under a disposition of property upon death and no natural person is an heir by operation of law, the application of the law so determined shall not preclude the right of a Member State or of an entity appointed for that purpose by that Member State to appropriate under its own law the assets of the estate located on its territory, provided that the creditors are entitled to seek satisfaction of their claims out of the assets of the estate as a whole.

Article 34. Renvoi

1. The application of the law of any third State specified by this Regulation shall mean the application of the rules of law in force in that State, including its rules of private international law in so far as those rules make a renvoi:

- (a) to the law of a Member State; or
- (b) to the law of another third State which would apply its own law.

2. No renvoi shall apply with respect to the laws referred to in Article 21(2), Article 22, Article 27, point (b) of Article 28 and Article 30.

Article 35. Public policy (ordre public)

The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.

Article 36. States with more than one legal system – territorial conflicts of laws

1. Where the law specified by this Regulation is that of a State which comprises several territorial units each of which has its own rules of law in respect of succession, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.

2. In the absence of such internal conflict-of-laws rules:

(a) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the habitual residence of the deceased, be construed as referring to the law of the territorial unit in which the deceased had his habitual residence at the time of death;

(b) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the nationality of the deceased, be construed as referring to the law of the territorial unit with which the deceased had the closest connection;

(c) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.

3. Notwithstanding paragraph 2, any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the relevant law pursuant to Article 27, in the absence of internal conflict-of-laws rules in that State, be construed as referring to the law of the territorial unit with which the testator or the persons whose succession is concerned by the agreement as to succession had the closest connection.

Article 37. States with more than one legal system – inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of succession, any reference to the law of that State shall be construed as referring to the system of law or set of

rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the deceased had the closest connection shall apply.

Article 38. Non-application of this Regulation to internal conflicts of laws

A Member State which comprises several territorial units each of which has its own rules of law in respect of succession shall not be required to apply this Regulation to conflicts of laws arising between such units only.

CHAPTER IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS

Article 39. Recognition

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedure provided for in Articles 45 to 58, apply for that decision to be recognised.

3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 40. Grounds of non-recognition

A decision shall not be recognised:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State in which recognition is sought;

(b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;

(c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought;

(d) if it is irreconcilable with an earlier decision given in another Member State or in a third State in proceedings involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 41. No review as to the substance

Under no circumstances may a decision given in a Member State be reviewed as to its substance.

Article 42. Staying of recognition proceedings

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged in the Member State of origin.

Article 43. Enforceability

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 45 to 58.

Article 44. Determination of domicile

To determine whether, for the purposes of the procedure provided for in Articles 45 to 58, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

Article 45. Jurisdiction of local courts

1. The application for a declaration of enforceability shall be submitted to the

court or competent authority of the Member State of enforcement communicated by that Member State to the Commission in accordance with Article 78.

2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 46. Procedure

1. The application procedure shall be governed by the law of the Member State of enforcement.

2. The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.

3. The application shall be accompanied by the following documents:

(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;

(b) the attestation issued by the court or competent authority of the Member State of origin using the form established in accordance with the advisory procedure referred to in Article 81(2), without prejudice to Article 47.

Article 47. Non-production of the attestation

1. If the attestation referred to in point (b) of Article 46(3) is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

Article 48. Declaration of enforceability

The decision shall be declared enforceable immediately on completion of the formalities in Article 46 without any review under Article 40. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 49. Notice of the decision on the application for a declaration of enforceability

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.

2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

Article 50. Appeal against the decision on the application for a declaration of enforceability

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal shall be lodged with the court communicated by the Member State concerned to the Commission in accordance with Article 78.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 16 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of

service, either on him in person or at his residence. No extension may be granted on account of distance.

Article 51. Procedure to contest the decision given on appeal

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 78.

Article 52. Refusal or revocation of a declaration of enforceability

The court with which an appeal is lodged under Article 50 or Article 51 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 40. It shall give its decision without delay.

Article 53. Staying of proceedings

The court with which an appeal is lodged under Article 50 or Article 51 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Article 54. Provisional, including protective, measures

1. When a decision must be recognised in accordance with this Chapter, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 48 being required.

2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.

3. During the time specified for an appeal pursuant to Article 50(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 55. Partial enforceability

1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.

2. An applicant may request a declaration of enforceability limited to parts of a decision.

Article 56. Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

Article 57. No security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Article 58. No charge, duty or fee

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

CHAPTER V
AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 59. Acceptance of authentic instruments

1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 81(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

2. Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court.

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.

4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of succession, that court shall have jurisdiction over that question.

Article 60. Enforceability of authentic instruments

1. An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58.

2. For the purposes of point (b) of Article 46(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 81(2).

3. The court with which an appeal is lodged under Article 50 or Article 51 shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

Article 61. Enforceability of court settlements

1. Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58.

2. For the purposes of point (b) of Article 46(3), the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 81(2).

3. The court with which an appeal is lodged under Article 50 or Article 51 shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

CHAPTER VI
EUROPEAN CERTIFICATE OF SUCCESSION

Article 62. Creation of a European Certificate of Succession

1. This Regulation creates a European Certificate of Succession (hereinafter referred to as 'the Certificate') which shall be issued for use in another Member State and shall produce the effects listed in Article 69.

2. The use of the Certificate shall not be mandatory.

3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter.

Article 63. Purpose of the Certificate

1. The Certificate is for use by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate.

2. The Certificate may be used, in particular, to demonstrate one or more of the following:

(a) the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;

(b) the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;

(c) the powers of the person mentioned in the Certificate to execute the will or administer the estate.

Article 64. Competence to issue the Certificate

The Certificate shall be issued in the Member State whose courts have jurisdiction under Article 4, Article 7, Article 10 or Article 11. The issuing authority shall be:

(a) a court as defined in Article 3(2); or

(b) another authority which, under national law, has competence to deal with matters of succession.

Article 65. Application for a Certificate

1. The Certificate shall be issued upon application by any person referred to in Article 63(1) (hereinafter referred to as 'the applicant').

2. For the purposes of submitting an application, the applicant may use the form established in accordance with the advisory procedure referred to in Article 81(2).

3. The application shall contain the information listed below, to the extent that such information is within the applicant's knowledge and is necessary in order to enable the issuing authority to certify the elements which the applicant wants certified, and shall be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 66(2):

(a) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;

(b) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;

(c) details concerning the representative of the applicant, if any: surname (if applicable, surname at birth), given name(s), address and representative capacity;

(d) details of the spouse or partner of the deceased and, if applicable,

ex-spouse(s) or ex-partner(s): surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable) and address;

(e) details of other possible beneficiaries under a disposition of property upon death and/or by operation of law: surname and given name(s) or organisation name, identification number (if applicable) and address;

(f) the intended purpose of the Certificate in accordance with Article 63;

(g) the contact details of the court or other competent authority which is dealing with or has dealt with the succession as such, if applicable;

(h) the elements on which the applicant founds, as appropriate, his claimed right to succession property as a beneficiary and/or his right to execute the will of the deceased and/or to administer the estate of the deceased;

(i) an indication of whether the deceased had made a disposition of property upon death; if neither the original nor a copy is appended, an indication regarding the location of the original;

(j) an indication of whether the deceased had entered into a marriage contract or into a contract regarding a relationship which may have comparable effects to marriage; if neither the original nor a copy of the contract is appended, an indication regarding the location of the original;

(k) an indication of whether any of the beneficiaries has made a declaration concerning acceptance or waiver of the succession;

(l) a declaration stating that, to the applicant's best knowledge, no dispute is pending relating to the elements to be certified;

(m) any other information which the applicant deems useful for the purposes of the issue of the Certificate.

Article 66. Examination of the application

1. Upon receipt of the application the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised by its own law, or shall invite the applicant to provide any further evidence which it deems necessary.

2. Where the applicant has been unable to produce copies of the relevant documents which satisfy the conditions necessary to establish their authenticity, the issuing authority may decide to accept other forms of evidence.

3. Where this is provided for by its own law and subject to the conditions laid down therein, the issuing authority may require that declarations be made on oath or by a statutory declaration in lieu of an oath.

4. The issuing authority shall take all necessary steps to inform the beneficiaries of the application for a Certificate. It shall, if necessary for the establishment of the elements to be certified, hear any person involved and any executor or administrator and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights.

5. For the purposes of this Article, the competent authority of a Member State shall, upon request, provide the issuing authority of another Member State with information held, in particular, in the land registers, the civil status registers and registers recording documents and facts of relevance for the succession or for the matrimonial property regime or an equivalent property regime of the deceased, where that competent authority would be authorised, under national law, to provide another national authority with such information.

Article 67. Issue of the Certificate

1. The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements. It shall use the form established in accordance with the advisory procedure referred to in Article 81(2).

The issuing authority shall not issue the Certificate in particular if:

- (a) the elements to be certified are being challenged; or
- (b) the Certificate would not be in conformity with a decision covering the same elements.

2. The issuing authority shall take all necessary steps to inform the beneficiaries of the issue of the Certificate.

Article 68. Contents of the Certificate

The Certificate shall contain the following information, to the extent required for the purpose for which it is issued:

- (a) the name and address of the issuing authority;
- (b) the reference number of the file;
- (c) the elements on the basis of which the issuing authority considers itself competent to issue the Certificate;
- (d) the date of issue;
- (e) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
- (f) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;
- (g) details concerning the beneficiaries: surname (if applicable, surname at birth), given name(s) and identification number (if applicable);
- (h) information concerning a marriage contract entered into by the deceased or, if applicable, a contract entered into by the deceased in the context of a relationship deemed by the law applicable to such a relationship to have comparable effects to marriage, and information concerning the matrimonial property regime or equivalent property regime;
- (i) the law applicable to the succession and the elements on the basis of which that law has been determined;
- (j) information as to whether the succession is testate or intestate, including information concerning the elements giving rise to the rights and/or powers of the heirs, legatees, executors of wills or administrators of the estate;
- (k) if applicable, information in respect of each beneficiary concerning the nature of the acceptance or waiver of the succession;
- (l) the share for each heir and, if applicable, the list of rights and/or assets for any given heir;
- (m) the list of rights and/or assets for any given legatee;
- (n) the restrictions on the rights of the heir(s) and, as appropriate, legatee(s) under the law applicable to the succession and/or under the disposition of property upon death;
- (o) the powers of the executor of the will and/or the administrator of the estate and the restrictions on those powers under the law applicable to the succession and/or under the disposition of property upon death.

Article 69. Effects of the Certificate

1. The Certificate shall produce its effects in all Member States, without any special procedure being required.

2. The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate.

3. Any person who, acting on the basis of the information certified in a

Certificate, makes payments or passes on property to a person mentioned in the Certificate as authorised to accept payment or property shall be considered to have transacted with a person with authority to accept payment or property, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

4. Where a person mentioned in the Certificate as authorised to dispose of succession property disposes of such property in favour of another person, that other person shall, if acting on the basis of the information certified in the Certificate, be considered to have transacted with a person with authority to dispose of the property concerned, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

5. The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State, without prejudice to points (k) and (l) of Article 1(2).

Article 70. Certified copies of the Certificate

1. The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant and to any person demonstrating a legitimate interest.

2. The issuing authority shall, for the purposes of Articles 71(3) and 73(2), keep a list of persons to whom certified copies have been issued pursuant to paragraph 1.

3. The certified copies issued shall be valid for a limited period of six months, to be indicated in the certified copy by way of an expiry date. In exceptional, duly justified cases, the issuing authority may, by way of derogation, decide that the period of validity is to be longer. Once this period has elapsed, any person in possession of a certified copy must, in order to be able to use the Certificate for the purposes indicated in Article 63, apply for an extension of the period of validity of the certified copy or request a new certified copy from the issuing authority.

Article 71. Rectification, modification or withdrawal of the Certificate

1. The issuing authority shall, at the request of any person demonstrating a legitimate interest or of its own motion, rectify the Certificate in the event of a clerical error.

2. The issuing authority shall, at the request of any person demonstrating a legitimate interest or, where this is possible under national law, of its own motion, modify or withdraw the Certificate where it has been established that the Certificate or individual elements thereof are not accurate.

3. The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 70(1) of any rectification, modification or withdrawal thereof.

Article 72. Redress procedures

1. Decisions taken by the issuing authority pursuant to Article 67 may be challenged by any person entitled to apply for a Certificate.

Decisions taken by the issuing authority pursuant to Article 71 and point (a) of Article 73(1) may be challenged by any person demonstrating a legitimate interest.

The challenge shall be lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State.

2. If, as a result of a challenge as referred to in paragraph 1, it is established that the Certificate issued is not accurate, the competent judicial authority shall rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the issuing authority.

If, as a result of a challenge as referred to in paragraph 1, it is established that the refusal to issue the Certificate was unjustified, the competent judicial authority shall issue the Certificate or ensure that the issuing authority re-assesses the case and makes a fresh decision.

Article 73. Suspension of the effects of the Certificate

1. The effects of the Certificate may be suspended by:

(a) the issuing authority, at the request of any person demonstrating a legitimate interest, pending a modification or withdrawal of the Certificate pursuant to Article 71; or

(b) the judicial authority, at the request of any person entitled to challenge a decision taken by the issuing authority pursuant to Article 72, pending such a challenge.

2. The issuing authority or, as the case may be, the judicial authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 70(1) of any suspension of the effects of the Certificate.

During the suspension of the effects of the Certificate no further certified copies of the Certificate may be issued.

CHAPTER VII GENERAL AND FINAL PROVISIONS

Article 74. Legalisation and other similar formalities

No legalisation or other similar formality shall be required in respect of documents issued in a Member State in the context of this Regulation.

Article 75. Relationship with existing international conventions

1. This Regulation shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation.

In particular, Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions shall continue to apply the provisions of that Convention instead of Article 27 of this Regulation with regard to the formal validity of wills and joint wills.

2. Notwithstanding paragraph 1, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

3. This Regulation shall not preclude the application of the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration, as revised by the intergovernmental agreement between those States of 1 June 2012, by the Member States which are parties thereto, in so far as it provides for:

(a) rules on the procedural aspects of estate administration as defined by the Convention and assistance in that regard by the authorities of the States Contracting Parties to the Convention; and

(b) simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of succession.

Article 76. Relationship with Council Regulation (EC) No 1346/2000

This Regulation shall not affect the application of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

Article 77. Information made available to the public

The Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide the Commission with a short summary of their national legislation and procedures relating to succession, including information on the type of authority which has competence in matters of succession and information

on the type of authority competent to receive declarations of acceptance or waiver of the succession, of a legacy or of a reserved share.

The Member States shall also provide fact sheets listing all the documents and/or information usually required for the purposes of registration of immovable property located on their territory.

The Member States shall keep the information permanently updated.

Article 78. Information on contact details and procedures

1. By 16 January 2014, the Member States shall communicate to the Commission:

(a) the names and contact details of the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 45(1) and with appeals against decisions on such applications in accordance with Article 50(2);

(b) the procedures to contest the decision given on appeal referred to in Article 51;

(c) the relevant information regarding the authorities competent to issue the Certificate pursuant to Article 64; and

(d) the redress procedures referred to in Article 72.

The Member States shall apprise the Commission of any subsequent changes to that information.

2. The Commission shall publish the information communicated in accordance with paragraph 1 in the Official Journal of the European Union, with the exception of the addresses and other contact details of the courts and authorities referred to in point (a) of paragraph 1.

3. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 79. Establishment and subsequent amendment of the list containing the information referred to in Article 3(2)

1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 3(2).

2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.

3. The Commission shall publish the list and any subsequent amendments in the Official Journal of the European Union.

4. The Commission shall make all information notified in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 80. Establishment and subsequent amendment of the attestations and forms referred to in Articles 46, 59, 60, 61, 65 and 67

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 46, 59, 60, 61, 65 and 67. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 81(2).

Article 81. Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 82. Review

By 18 August 2025 the Commission shall submit to the European Parliament, the

Council and the European Economic and Social Committee a report on the application of this Regulation, including an evaluation of any practical problems encountered in relation to parallel out-of-court settlements of succession cases in different Member States or an out-of-court settlement in one Member State effected in parallel with a settlement before a court in another Member State. The report shall be accompanied, where appropriate, by proposals for amendments.

Article 83. Transitional provisions

1. This Regulation shall apply to the succession of persons who die on or after 17 August 2015.

2. Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed.

3. A disposition of property upon death made prior to 17 August 2015 shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law which were in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession.

4. If a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession.

Article 84. Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 17 August 2015, except for Articles 77 and 78, which shall apply from 16 January 2014, and Articles 79, 80 and 81, which shall apply from 5 July 2012.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 4 July 2012.

REGULATION (EU) NO 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12 DECEMBER 2012 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (RECAST)

This Regulation is revoked by the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (SI 2019/479) reg 49.

Official Journal L 351, 20/12/2012 pp 1–32

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 67(4) and points (a), (c) and (e) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee,
Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) On 21 April 2009, the Commission adopted a report on the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The report concluded that, in general, the operation of that Regulation is satisfactory, but that it is desirable to improve the application of certain of its provisions, to further facilitate the free circulation of judgments and to further enhance access to justice. Since a number of amendments are to be made to that Regulation it should, in the interests of clarity, be recast.

(2) At its meeting in Brussels on 10 and 11 December 2009, the European Council adopted a new multiannual programme entitled 'The Stockholm Programme – an open and secure Europe serving and protecting citizens'. In the Stockholm Programme the European Council considered that the process of abolishing all intermediate measures (the *exequatur*) should be continued during the period covered by that Programme. At the same time the abolition of the *exequatur* should also be accompanied by a series of safeguards.

(3) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, *inter alia*, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(4) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments given in a Member State, are essential.

(5) Such provisions fall within the area of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union (TFEU).

(6) In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable.

(7) On 27 September 1968, the then Member States of the European Communities, acting under Article 220, fourth indent, of the Treaty establishing the European Economic Community, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, subsequently amended by conventions on the accession to that Convention of new Member States ('the 1968 Brussels Convention'). On 16 September 1988, the then Member States of the European Communities and certain EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ('the 1988 Lugano Convention'), which is a parallel convention to the 1968 Brussels Convention. The 1988 Lugano Convention became applicable to Poland on 1 February 2000.

(8) On 22 December 2000, the Council adopted Regulation (EC) No 44/2001, which replaces the 1968 Brussels Convention with regard to the territories of the Member States covered by the TFEU, as between the Member States except Denmark. By Council Decision 2006/325/EC, the Community concluded an agreement with Denmark ensuring the application of the provisions of Regulation (EC) No 44/2001 in Denmark. The 1988 Lugano Convention was revised by the Convention on

Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Lugano on 30 October 2007 by the Community, Denmark, Iceland, Norway and Switzerland ('the 2007 Lugano Convention').

(9) The 1968 Brussels Convention continues to apply to the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.

(10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, in particular maintenance obligations, which should be excluded from the scope of this Regulation following the adoption of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

(11) For the purposes of this Regulation, courts or tribunals of the Member States should include courts or tribunals common to several Member States, such as the Benelux Court of Justice when it exercises jurisdiction on matters falling within the scope of this Regulation. Therefore, judgments given by such courts should be recognised and enforced in accordance with this Regulation.

(12) This Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.

A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.

On the other hand, where a court of a Member State, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court's judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 ('the 1958 New York Convention'), which takes precedence over this Regulation.

This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.

(13) There must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Accordingly, common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a Member State.

(14) A defendant not domiciled in a Member State should in general be subject to the national rules of jurisdiction applicable in the territory of the Member State of the court seised.

However, in order to ensure the protection of consumers and employees, to safeguard the jurisdiction of the courts of the Member States in situations where they have exclusive jurisdiction and to respect the autonomy of the parties, certain rules of jurisdiction in this Regulation should apply regardless of the defendant's domicile.

(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

(17) The owner of a cultural object as defined in Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State should be able under this Regulation to initiate proceedings as regards a civil claim for the recovery, based on ownership, of such a cultural object in the courts for the place where the cultural object is situated at the time the court is seised. Such proceedings should be without prejudice to proceedings initiated under Directive 93/7/EEC.

(18) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.

(19) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.

(20) Where a question arises as to whether a choice-of-court agreement in favour of a court or the courts of a Member State is null and void as to its substantive validity, that question should be decided in accordance with the law of the Member State of the court or courts designated in the agreement, including the conflict-of-laws rules of that Member State.

(21) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in different Member States. There should be a clear and effective mechanism for resolving cases of *lis pendens* and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation, that time should be defined autonomously.

(22) However, in order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, it is necessary to provide for an exception to the general *lis pendens* rule in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise. This is the situation where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties. In such a case, the court first seised should be required to stay its proceedings as soon as the designated court has been seised and until such time as the latter court declares that it has no jurisdiction under the exclusive choice-of-court agreement. This is to ensure that, in such a situation, the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute pending before it. The designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings.

This exception should not cover situations where the parties have entered into conflicting exclusive choice-of-court agreements or where a court designated in an exclusive choice-of-court agreement has been seised first. In such cases, the general *lis pendens* rule of this Regulation should apply.

(23) This Regulation should provide for a flexible mechanism allowing the courts of the Member States to take into account proceedings pending before the courts of third States, considering in particular whether a judgment of a third State will be capable of recognition and enforcement in the Member State concerned under the law of that Member State and the proper administration of justice.

(24) When taking into account the proper administration of justice, the court of the Member State concerned should assess all the circumstances of the case before it. Such circumstances may include connections between the facts of the case and the parties and the third State concerned, the stage to which the proceedings in the third State have progressed by the time proceedings are initiated in the court of the Member State and whether or not the court of the third State can be expected to give a judgment within a reasonable time.

That assessment may also include consideration of the question whether the court of the third State has exclusive jurisdiction in the particular case in circumstances where a court of a Member State would have exclusive jurisdiction.

(25) The notion of provisional, including protective, measures should include, for example, protective orders aimed at obtaining information or preserving evidence as referred to in Articles 6 and 7 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights. It should not include measures which are not of a protective nature, such as measures ordering the hearing of a witness. This should be without prejudice to the application of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

(26) Mutual trust in the administration of justice in the Union justifies the principle that judgments given in a Member State should be recognised in all Member States without the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed.

(27) For the purposes of the free circulation of judgments, a judgment given in a Member State should be recognised and enforced in another Member State even if it is given against a person not domiciled in a Member State.

(28) Where a judgment contains a measure or order which is not known in the law of the Member State addressed, that measure or order, including any right indicated therein, should, to the extent possible, be adapted to one which, under the law of that Member State, has equivalent effects attached to it and pursues similar aims. How, and by whom, the adaptation is to be carried out should be determined by each Member State.

(29) The direct enforcement in the Member State addressed of a judgment given in another Member State without a declaration of enforceability should not jeopardise respect for the rights of the defence. Therefore, the person against whom enforcement is sought should be able to apply for refusal of the recognition or enforcement of a judgment if he considers one of the grounds for refusal of recognition to be present. This should include the ground that he had not had the opportunity to arrange for his defence where the judgment was given in default of appearance in a civil action linked to criminal proceedings. It should also include the grounds which could be invoked on the basis of an agreement between the Member State addressed and a third State concluded pursuant to Article 59 of the 1968 Brussels Convention.

(30) A party challenging the enforcement of a judgment given in another

Member State should, to the extent possible and in accordance with the legal system of the Member State addressed, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law.

The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present.

(31) Pending a challenge to the enforcement of a judgment, it should be possible for the courts in the Member State addressed, during the entire proceedings relating to such a challenge, including any appeal, to allow the enforcement to proceed subject to a limitation of the enforcement or to the provision of security.

(32) In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service.

(33) Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State.

(34) Continuity between the 1968 Brussels Convention, Regulation (EC) No 44/2001 and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the 1968 Brussels Convention and of the Regulations replacing it.

(35) Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.

(36) Without prejudice to the obligations of the Member States under the Treaties, this Regulation should not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.

(37) In order to ensure that the certificates to be used in connection with the recognition or enforcement of judgments, authentic instruments and court settlements under this Regulation are kept up-to-date, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of amendments to Annexes I and II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(38) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and to a fair trial guaranteed in Article 47 of the Charter.

(39) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(40) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the TEU and to the then Treaty establishing the European Community, took part in the adoption and application of Regulation (EC) No 44/2001. In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(41) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to the possibility for Denmark of applying the amendments to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,*

HAVE ADOPTED THIS REGULATION:

CHAPTER I SCOPE AND DEFINITIONS

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

2. This Regulation shall not apply to:

- (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
- (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (c) social security;
- (d) arbitration;
- (e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
- (f) wills and succession, including maintenance obligations arising by reason of death.

Article 2

For the purposes of this Regulation:

- (a) 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

*But see Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (implementing Regulation (EU) No 1215/2012): p 362 below.

For the purposes of Chapter III, ‘judgment’ includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

(b) ‘court settlement’ means a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings;

(c) ‘authentic instrument’ means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose;

(d) ‘Member State of origin’ means the Member State in which, as the case may be, the judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been formally drawn up or registered;

(e) ‘Member State addressed’ means the Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought;

(f) ‘court of origin’ means the court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Article 3

For the purposes of this Regulation, ‘court’ includes the following authorities to the extent that they have jurisdiction in matters falling within the scope of this Regulation:

(a) in Hungary, in summary proceedings concerning orders to pay (fizetési meghagyásos eljárás), the notary (közjegyző);

(b) in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande) and assistance (handräckning), the Enforcement Authority (Kronofogdemyndigheten).

CHAPTER II JURISDICTION

Section 1 General provisions

Article 4

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.

Article 5

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.

Article 6

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State.

Section 2 Special jurisdiction

Article 7

A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

—in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

—in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

(3) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

(4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seized;

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

(6) as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

(7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment; or

(b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 8

A person domiciled in a Member State may also be sued:

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seized of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

(3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

(4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Member State in which the property is situated.

Article 9

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

Section 3

Jurisdiction in matters relating to insurance

Article 10

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.

Article 11

1. An insurer domiciled in a Member State may be sued:

- (a) in the courts of the Member State in which he is domiciled;
- (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or
- (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 12

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 13

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 14

1. Without prejudice to Article 13(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 15

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen;

(2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;

(3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State;

(4) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or

(5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.

Article 16

The following are the risks referred to in point 5 of Article 15:

(1) any loss of or damage to:

(a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;

(b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;

(2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage:

(a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;

(b) for loss or damage caused by goods in transit as described in point 1(b);

(3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;

(4) any risk or interest connected with any of those referred to in points 1 to 3;

(5) notwithstanding points 1 to 4, all 'large risks' as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

Section 4

Jurisdiction over consumer contracts

Article 17

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

(a) it is a contract for the sale of goods on instalment credit terms;

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 18

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 19

The provisions of this Section may be departed from only by an agreement:

(1) which is entered into after the dispute has arisen;

(2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or

(3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

Section 5**Jurisdiction over individual contracts of employment****Article 20**

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.

2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 21

1. An employer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled; or

(b) in another Member State:

(i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or

(ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.

Article 22

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 23

The provisions of this Section may be departed from only by an agreement:

(1) which is entered into after the dispute has arisen; or

(2) which allows the employee to bring proceedings in courts other than those indicated in this Section.

Section 6 Exclusive jurisdiction

Article 24

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

(2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

(3) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

(4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State;

(5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

Section 7 Prorogation of jurisdiction

Article 25

1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing;

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought

against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved.

4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.

5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.

Article 26

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.

2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.

Section 8

Examination as to jurisdiction and admissibility

Article 27

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction.

Article 28

1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

3. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) shall apply instead of paragraph 2 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

4. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Section 9

Lis pendens — related actions

Article 29

1. Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member

States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. In cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 32.

3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where the action in the court first seised is pending at first instance, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 31

1. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

2. Without prejudice to Article 26, where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement.

3. Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court.

4. Paragraphs 2 and 3 shall not apply to matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the claimant and the agreement is not valid under a provision contained within those Sections.

Article 32

1. For the purposes of this Section, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; 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 claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served.

2. The court, or the authority responsible for service, referred to in paragraph 1, shall note, respectively, the date of the lodging of the document instituting the proceedings or the equivalent document, or the date of receipt of the documents to be served.

Article 33

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if:

- (a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and
 - (b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.
2. The court of the Member State may continue the proceedings at any time if:
 - (a) the proceedings in the court of the third State are themselves stayed or discontinued;
 - (b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or
 - (c) the continuation of the proceedings is required for the proper administration of justice.
 3. The court of the Member State shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.
 4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

Article 34

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and an action is pending before a court of a third State at the time when a court in a Member State is seised of an action which is related to the action in the court of the third State, the court of the Member State may stay the proceedings if:
 - (a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
 - (b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and
 - (c) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.
2. The court of the Member State may continue the proceedings at any time if:
 - (a) it appears to the court of the Member State that there is no longer a risk of irreconcilable judgments;
 - (b) the proceedings in the court of the third State are themselves stayed or discontinued;
 - (c) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or
 - (d) the continuation of the proceedings is required for the proper administration of justice.
3. The court of the Member State may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.
4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

Section 10 Provisional, including protective, measures

Article 35

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III RECOGNITION AND ENFORCEMENT

Section 1 Recognition

Article 36

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.

Article 37

1. A party who wishes to invoke in a Member State a judgment given in another Member State shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate issued pursuant to Article 53.

2. The court or authority before which a judgment given in another Member State is invoked may, where necessary, require the party invoking it to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate referred to in point (b) of paragraph 1. The court or authority may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation.

Article 38

The court or authority before which a judgment given in another Member State is invoked may suspend the proceedings, in whole or in part, if:

(a) the judgment is challenged in the Member State of origin; or

(b) an application has been submitted for a decision that there are no grounds for refusal of recognition as referred to in Article 45 or for a decision that the recognition is to be refused on the basis of one of those grounds.

Section 2 Enforcement

Article 39

A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

Article 40

An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

Article 41

1. Subject to the provisions of this Section, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. A judgment given in a Member State which is enforceable in the Member State addressed shall be enforced there under the same conditions as a judgment given in the Member State addressed.

2. Notwithstanding paragraph 1, the grounds for refusal or of suspension of enforcement under the law of the Member State addressed shall apply in so far as they are not incompatible with the grounds referred to in Article 45.

3. The party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 42

1. For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.

2. For the purposes of enforcement in a Member State of a judgment given in another Member State ordering a provisional, including a protective, measure, the applicant shall provide the competent enforcement authority with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

(b) the certificate issued pursuant to Article 53, containing a description of the measure and certifying that:

(i) the court has jurisdiction as to the substance of the matter;

(ii) the judgment is enforceable in the Member State of origin; and

(c) where the measure was ordered without the defendant being summoned to appear, proof of service of the judgment.

3. The competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate.

4. The competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

Article 43

1. Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.

2. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, he may request a translation of the judgment in order to contest the enforcement if the judgment is not written in or accompanied by a translation into either of the following languages:

(a) a language which he understands; or

(b) the official language of the Member State in which he is domiciled or, where there are several official languages in that Member State, the official language or one of the official languages of the place where he is domiciled.

Where a translation of the judgment is requested under the first subparagraph, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought.

This paragraph shall not apply if the judgment has already been served on the person against whom enforcement is sought in one of the languages referred to in the first subparagraph or is accompanied by a translation into one of those languages.

3. This Article shall not apply to the enforcement of a protective measure in a judgment or where the person seeking enforcement proceeds to protective measures in accordance with Article 40.

Article 44

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:

- (a) limit the enforcement proceedings to protective measures;
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) suspend, either wholly or in part, the enforcement proceedings.

2. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

Section 3
Refusal of recognition and enforcement

Subsection 1
Refusal of recognition

Article 45

1. On the application of any interested party, the recognition of a judgment shall be refused:

- (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed;
- (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
- (c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;
- (d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or
- (e) if the judgment conflicts with:
 - (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or
 - (ii) Section 6 of Chapter II.

2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.

Subsection 2
Refusal of enforcement

Article 46

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

Article 47

1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted.

2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.

3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 48

The court shall decide on the application for refusal of enforcement without delay.

Article 49

1. The decision on the application for refusal of enforcement may be appealed against by either party.

2. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged.

Article 50

The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

Article 51

1. The court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

2. Where the judgment was given in Ireland, Cyprus or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

Section 4
Common provisions

Article 52

Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed.

Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.

Article 54

1. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible,

be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests.

Such adaptation shall not result in effects going beyond those provided for in the law of the Member State of origin.

2. Any party may challenge the adaptation of the measure or order before a court.

3. If necessary, the party invoking the judgment or seeking its enforcement may be required to provide a translation or a transliteration of the judgment.

Article 55

A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

Article 56

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for the enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State addressed.

Article 57

1. When a translation or a transliteration is required under this Regulation, such translation or transliteration shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a judgment given in another Member State is invoked or an application is made, in accordance with the law of that Member State.

2. For the purposes of the forms referred to in Articles 53 and 60, translations or transliterations may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.

3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

CHAPTER IV AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 58

1. An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (*ordre public*) in the Member State addressed.

The provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III shall apply as appropriate to authentic instruments.

2. The authentic instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Article 59

A court settlement which is enforceable in the Member State of origin shall be enforced in the other Member States under the same conditions as authentic instruments.

Article 60

The competent authority or court of the Member State of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex II containing a summary of the enforceable obligation recorded in the authentic instrument or of the agreement between the parties recorded in the court settlement.

CHAPTER V GENERAL PROVISIONS

Article 61

No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.

Article 62

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.

2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

Article 63

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat;
- (b) central administration; or
- (c) principal place of business.

2. For the purposes of Ireland, Cyprus and the United Kingdom, 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 64

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

Article 65

1. The jurisdiction specified in point 2 of Article 8 and Article 13 in actions on a warranty or guarantee or in any other third-party proceedings may be resorted to in the Member States included in the list established by the Commission pursuant to point (b) of Article 76(1) and Article 76(2) only in so far as permitted under national law. A person domiciled in another Member State may be invited to join the proceedings before the courts of those Member States pursuant to the rules on third-party notice referred to in that list.

2. Judgments given in a Member State by virtue of point 2 of Article 8 or Article 13 shall be recognised and enforced in accordance with Chapter III in any other Member State. Any effects which judgments given in the Member States included in the list referred to in paragraph 1 may have, in accordance with the law of those Member States, on third parties by application of paragraph 1 shall be recognised in all Member States.

3. The Member States included in the list referred to in paragraph 1 shall, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC ('the European Judicial Network') provide information on how to determine, in accordance with their national law, the effects of the judgments referred to in the second sentence of paragraph 2.

CHAPTER VI TRANSITIONAL PROVISIONS

Article 66

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.

2. Notwithstanding Article 80, Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.

CHAPTER VII RELATIONSHIP WITH OTHER INSTRUMENTS

Article 67

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments.

Article 68

1. This Regulation shall, as between the Member States, supersede the 1968 Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.

2. In so far as this Regulation replaces the provisions of the 1968 Brussels Convention between the Member States, any reference to that Convention shall be understood as a reference to this Regulation.

Article 69

Subject to Articles 70 and 71, this Regulation shall, as between the Member States, supersede the conventions that cover the same matters as those to which this Regulation applies. In particular, the conventions included in the list established by the Commission pursuant to point (c) of Article 76(1) and Article 76(2) shall be superseded.

Article 70

1. The conventions referred to in Article 69 shall continue to have effect in relation to matters to which this Regulation does not apply.

2. They shall continue to have effect in respect of judgments given, authentic instruments formally drawn up or registered and court settlements approved or concluded before the date of entry into force of Regulation (EC) No 44/2001.

Article 71

1. This Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

(a) this Regulation shall not prevent a court of a Member State which is party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not party to that convention. The court hearing the action shall, in any event, apply Article 28 of this Regulation;

(b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation on recognition and enforcement of judgments may be applied.

Article 72

This Regulation shall not affect agreements by which Member States, prior to the entry into force of Regulation (EC) No 44/2001, undertook pursuant to Article 59 of the 1968 Brussels Convention not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third State where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

Article 73

1. This Regulation shall not affect the application of the 2007 Lugano Convention.
2. This Regulation shall not affect the application of the 1958 New York Convention.
3. This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.

CHAPTER VIII FINAL PROVISIONS

Article 74

The Member States shall provide, within the framework of the European Judicial Network and with a view to making the information available to the public, a description of national rules and procedures concerning enforcement, including authorities competent for enforcement, and information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods.

The Member States shall keep this information permanently updated.

Article 75

By 10 January 2014, the Member States shall communicate to the Commission:

- (a) the courts to which the application for refusal of enforcement is to be submitted pursuant to Article 47(1);
- (b) the courts with which an appeal against the decision on the application for refusal of enforcement is to be lodged pursuant to Article 49(2);
- (c) the courts with which any further appeal is to be lodged pursuant to Article 50; and
- (d) the languages accepted for translations of the forms as referred to in Article 57(2).

The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network.

Article 76

1. The Member States shall notify the Commission of:
 - (a) the rules of jurisdiction referred to in Articles 5(2) and 6(2);
 - (b) the rules on third-party notice referred to in Article 65; and
 - (c) the conventions referred to in Article 69.
2. The Commission shall, on the basis of the notifications by the Member States referred to in paragraph 1, establish the corresponding lists.

3. The Member States shall notify the Commission of any subsequent amendments required to be made to those lists. The Commission shall amend those lists accordingly.

4. The Commission shall publish the lists and any subsequent amendments made to them in the Official Journal of the European Union.

5. The Commission shall make all information notified pursuant to paragraphs 1 and 3 publicly available through any other appropriate means, in particular through the European Judicial Network.

Article 77

The Commission shall be empowered to adopt delegated acts in accordance with Article 78 concerning the amendment of Annexes I and II.

Article 78

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 77 shall be conferred on the Commission for an indeterminate period of time from 9 January 2013.

3. The delegation of power referred to in Article 77 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 77 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 79

By 11 January 2022 the Commission shall present a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation. That report shall include an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a Member State, taking into account the operation of this Regulation and possible developments at international level. Where appropriate, the report shall be accompanied by a proposal for amendment of this Regulation.

Article 80

This Regulation shall repeal Regulation (EC) No 44/2001. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex III.

Article 81

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 12 December 2012.

ANNEX III

CORRELATION TABLE

Regulation (EC) No 44/2001	This Regulation
Article 1(1)	Article 1(1)
Article 1(2), introductory words	Article 1(2), introductory words
Article 1(2) point (a)	Article 1(2), points (a) and (f)
Article 1(2), points (b) to (d)	Article 1(2), points (b) to (d)
—	Article 1(2), point (e)
Article 1(3)	—
—	Article 2
Article 2	Article 4
Article 3	Article 5
Article 4	Article 6
Article 5, introductory words	Article 7, introductory words
Article 5, point (1)	Article 7, point (1)
Article 5, point (2)	—
Article 5, points (3) and (4)	Article 7, points (2) and (3)
—	Article 7, point (4)
Article 5, points (5) to (7)	Article 7, points (5) to (7)
Article 6	Article 8
Article 7	Article 9
Article 8	Article 10
Article 9	Article 11
Article 10	Article 12
Article 11	Article 13
Article 12	Article 14
Article 13	Article 15
Article 14	Article 16
Article 15	Article 17
Article 16	Article 18
Article 17	Article 19
Article 18	Article 20
Article 19, points (1) and (2)	Article 21(1)
—	Article 21(2)
Article 20	Article 22
Article 21	Article 23
Article 22	Article 24
Article 23(1) and (2)	Article 25(1) and (2)
Article 23(3)	—
Article 23(4) and (5)	Article 25(3) and (4)
—	Article 25(5)
Article 24	Article 26(1)
—	Article 26(2)
Article 25	Article 27
Article 26	Article 28
Article 27(1)	Article 29(1)
—	Article 29(2)
Article 27(2)	Article 29(3)
Article 28	Article 30
Article 29	Article 31(1)
—	Article 31(2)
—	Article 31(3)

Regulation (EC) No 44/2001	This Regulation
—	Article 31(4)
Article 30	Article 32(1), points (a) and (b)
—	Article 32(1), second subparagraph
—	Article 32(2)
—	Article 33
—	Article 34
Article 31	Article 35
Article 32	Article 2, point (a)
Article 33	Article 36
—	Article 37
—	Article 39
—	Article 40
—	Article 41
—	Article 42
—	Article 43
—	Article 44
Article 34	Article 45(1), points (a) to (d)
Article 35(1)	Article 45(1), point (e)
Article 35(2)	Article 45(2)
Article 35(3)	Article 45(3)
—	Article 45(4)
Article 36	Article 52
Article 37(1)	Article 38, point (a)
Article 38	—
Article 39	—
Article 40	—
Article 41	—
Article 42	—
Article 43	—
Article 44	—
Article 45	—
Article 46	—
Article 47	—
Article 48	—
—	Article 46
—	Article 47
—	Article 48
—	Article 49
—	Article 50
—	Article 51
—	Article 54
Article 49	Article 55
Article 50	—
Article 51	Article 56
Article 52	—
Article 53	—
Article 54	Article 53
Article 55(1)	—
Article 55(2)	Article 37(2), Article 47(3) and Article 57
Article 56	Article 61
Article 57(1)	Article 58(1)
Article 57(2)	—
Article 57(3)	Article 58(2)

Regulation (EC) No 44/2001	This Regulation
Article 57(4)	Article 60
Article 58	Article 59 and Article 60
Article 59	Article 62
Article 60	Article 63
Article 61	Article 64
Article 62	Article 3
Article 63	—
Article 64	—
Article 65	Article 65(1) and (2)
—	Article 65(3)
Article 66	Article 66
Article 67	Article 67
Article 68	Article 68
Article 69	Article 69
Article 70	Article 70
Article 71	Article 71
Article 72	Article 72
—	Article 73
Article 73	Article 79
Article 74(1)	Article 75, first paragraph, points (a), (b) and (c), and Article 76(1), point (a)
Article 74(2)	Article 77
—	Article 78
—	Article 80
Article 75	—
Article 76	Article 81
Annex I	Article 76(1), point (a)
Annex II	Article 75, point (a)
Annex III	Article 75, point (b)
Annex IV	Article 75, point (c)
Annex V	Annex I and Annex II
Annex VI	Annex II
—	Annex III

AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE KINGDOM OF DENMARK ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (IMPLEMENTING REGULATION (EU) NO 1215/2012)

Official Journal L 79, 21/3/2013 p 4

According to Article 3(2) of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereafter the Agreement), concluded by Council Decision 2006/325/EC, whenever amendments to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters are adopted, Denmark shall notify the Commission of its decision whether or not to implement the content of such amendments.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted on 12 December 2012.

In accordance with Article 3(2) of the Agreement, Denmark has by letter of 20

December 2012 notified the Commission of its decision to implement the contents of Regulation (EU) No 1215/2012. This means that the provisions of Regulation (EU) No 1215/2012 will be applied to relations between the Union and Denmark.

In accordance with Article 3(6) of the Agreement, the Danish notification creates mutual obligations between Denmark and the Community. Thus, Regulation (EU) No 1215/2012 constitutes an amendment to the Agreement and is considered annexed thereto.

With reference to Article 3(3) and (4) of the Agreement, implementation of Regulation (EU) No 1215/2012 in Denmark can take place by amending existing legislation by the decision of Danish Parliament. In accordance with Article 3(5)(b) of the Agreement, Denmark shall notify the Commission of the date upon which such implementing legislative measures enter into force.

**COUNCIL REGULATION (EU) 2019/1111 OF 25 JUNE 2019
ON JURISDICTION, THE RECOGNITION AND ENFORCEMENT OF
DECISIONS IN MATRIMONIAL MATTERS AND THE MATTERS OF
PARENTAL RESPONSIBILITY, AND ON INTERNATIONAL CHILD
ABDUCTION (RECAST)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

(1) On 15 April 2014, the Commission adopted a report on the application of Council Regulation (EC) No 2201/2003. The report concluded that Regulation (EC) No 2201/2003 is a well-functioning instrument that has brought important benefits to citizens, but that the existing rules could be improved. A number of amendments are to be made to that Regulation. In the interests of clarity, that Regulation should be recast.

(2) This Regulation establishes uniform jurisdiction rules for divorce, legal separation and marriage annulment as well as for disputes about parental responsibility with an international element. It facilitates the circulation of decisions, as well as of authentic instruments and certain agreements, in the Union by laying down provisions on their recognition and enforcement in other Member States. Moreover, this Regulation clarifies the child's right to be provided with an opportunity to express his or her views in proceedings to which he or she is subject and also contains provisions complementing the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') in relations between Member States. Therefore, this Regulation should help to strengthen legal certainty and increase flexibility, to ensure that access to court proceedings is improved and to ensure that such proceedings are made more efficient.

(3) The smooth and correct functioning of a Union area of justice with respect for the Member States' different legal systems and traditions is vital for the Union. In that regard, mutual trust in one another's justice systems should be further enhanced. The Union has set itself the objective of creating, maintaining and developing an area of freedom, security and justice, in which the free movement of

persons and access to justice are ensured. With a view to implementing that objective, the rights of persons, in particular children, in legal procedures should be reinforced in order to facilitate the cooperation of judicial and administrative authorities and the enforcement of decisions in family law matters with cross-border implications. The mutual recognition of decisions in civil matters should be enhanced, access to justice should be simplified and exchanges of information between the authorities of the Member States should be improved.

(4) To this end, the Union is to adopt, among others, measures in the field of judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market. The term 'civil matters' should be interpreted autonomously, in accordance with the established case-law of the Court of Justice of the European Union ('the Court of Justice'). It should be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of this Regulation and, second, to the general principles which stem from the corpus of the national legal systems. The term 'civil matters' should therefore be interpreted as capable of extending also to measures which, from the point of view of the legal system of a Member State, might fall under public law. It should cover, in particular, all applications, measures or decisions in matters of 'parental responsibility' within the meaning of this Regulation, in accordance with its objectives.

(5) This Regulation covers 'civil matters', which includes civil court proceedings and the resulting decisions as well as authentic instruments and certain extra-judicial agreements in matrimonial matters and matters of parental responsibility. Moreover, the term 'civil matters' should cover applications, measures or decisions as well as authentic instruments and certain extra-judicial agreements concerning the return of a child under the 1980 Hague Convention, which, according to the case-law of the Court of Justice and in line with Article 19 of the 1980 Hague Convention, are not proceedings on the substance of parental responsibility but closely related to it and addressed by certain provisions of this Regulation.

(6) In order to facilitate the circulation of decisions as well as of authentic instruments and certain agreements in matrimonial matters and matters of parental responsibility, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of decisions be governed by a legal instrument of the Union which is binding and directly applicable.

(7) In order to ensure equality for all children, this Regulation should cover all decisions on parental responsibility, including measures for the protection of the child, independent of any link with matrimonial proceedings or other proceedings.

(8) However, since the application of the rules on parental responsibility often arises in the context of matrimonial proceedings, it is appropriate to have a single instrument for matters of divorce and parental responsibility.

(9) As regards decisions on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties. It should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures. Decisions refusing the dissolution of matrimonial ties should not be covered by its provisions on recognition.

(10) As regards the property of the child, this Regulation should apply only to measures for the protection of the child, namely the designation and functions of a person or body having charge of the child's property, representing or assisting the child, and the administration, conservation or disposal of the child's property. In this context, this Regulation should, for instance, apply in cases where the object of the proceedings is the designation of a person or body administering the child's property. Measures relating to the child's property which do not concern the protection of the child should continue to be governed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council. However, it should be possible for the provisions of this Regulation on jurisdiction over incidental questions to apply in such cases.

(11) Any type of placement of a child in foster care, that is, according to national law and procedure, with one or more individuals, or institutional care, for example in an orphanage or a children's home, in another Member State should fall within the scope of this Regulation unless expressly excluded, which is for example the case for placement with a view to adoption, placement with a parent or, where applicable, with any other close relative as declared by the receiving Member State. As a result, also 'educational placements' ordered by a court or arranged by a competent authority with the agreement of the parents or the child or upon their request following deviant behaviour of the child should be included. Only a placement – be it educational or punitive – ordered or arranged following an act of the child which, if committed by an adult, could amount to a punishable act under national criminal law, regardless of whether in the particular case this could lead to a conviction, should be excluded.

(12) This Regulation should not apply to the establishment of parenthood, since that is a different matter from the attribution of parental responsibility, nor should it apply to other questions linked to the status of persons.

(13) Maintenance obligations are excluded from the scope of this Regulation, as those obligations are already covered by Council Regulation (EC) No 4/2009. In addition to the courts for the place where the defendant, or the creditor, is habitually resident, the courts having jurisdiction under this Regulation in matrimonial matters should generally have jurisdiction to decide on ancillary spousal or post-marital maintenance obligations by application of point (c) of Article 3 of that Regulation. The courts having jurisdiction under this Regulation in matters of parental responsibility generally have jurisdiction to decide on ancillary child maintenance obligations by application of point (d) of Article 3 of that Regulation.

(14) According to the case-law of the Court of Justice, the term 'court' should be given a broad meaning so as to also cover administrative authorities, or other authorities, such as notaries, who or which exercise jurisdiction in certain matrimonial matters or matters of parental responsibility. Any agreement approved by the court following an examination of the substance in accordance with national law and procedure should be recognised or enforced as a 'decision'. Other agreements which acquire binding legal effect in the Member State of origin following the formal intervention of a public authority or other authority as communicated to the Commission by a Member State for that purpose should be given effect in other Member States in accordance with the specific provisions on authentic instruments and agreements in this Regulation. This Regulation should not allow free circulation of mere private agreements. However, agreements which are neither a decision nor an authentic instrument, but have been registered by a public authority competent to do so, should circulate. Such public authorities might include notaries registering agreements, even where they are exercising a liberal profession.

(15) In relation to 'authentic instrument', the term 'empowerment' in this Regulation is to be interpreted autonomously in accordance with the definition of 'authentic instrument' used horizontally in other Union instruments and in light of the purposes of this Regulation.

(16) Although return proceedings under the 1980 Hague Convention are not proceedings on the substance of parental responsibility, decisions ordering the return of a child pursuant to the 1980 Hague Convention should benefit from recognition and enforcement under Chapter IV of this Regulation where they need to be enforced in another Member State due to a further abduction after return was ordered. This is without prejudice to the possibility of starting new proceedings for the return of a child under the 1980 Hague Convention with regard to the further abduction. Moreover, this Regulation should continue to apply to other aspects in situations of wrongful removal or retention of a child, for example the jurisdiction provisions for the court of the Member State of habitual residence, and the recognition and enforcement provisions for any orders made by that court.

(17) This Regulation should, like the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children ('the 1996 Hague Convention'), apply to all children up to the age of 18 years even in cases where they have acquired capacity before that age under the law governing their personal status, for example through emancipation by reason of marriage. This should avoid an overlap with the scope of the Hague Convention of 13 January 2000 on the International Protection of Adults which applies from the age of 18 years onwards and, at the same time, prevent gaps between those two instruments. The 1980 Hague Convention, and consequently also Chapter III of this Regulation, which complements the application of the 1980 Hague Convention in relations between Member States, should continue to apply to children up to the age of 16 years.

(18) For the purposes of this Regulation, a person should be deemed to have 'rights of custody' where, pursuant to a decision, by operation of law or by an agreement having legal effect under the law of the Member State where the child is habitually resident, a holder of parental responsibility cannot decide on the child's place of residence without the consent of that person, regardless of the terms used under national law. In some legal systems which retain the language of 'custody' and 'access', the non-custodial parent might in fact retain important responsibilities for decisions concerning the child which go beyond a mere right of access.

(19) The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. Any reference to the best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') as implemented by national law and procedure.

(20) To safeguard the best interests of the child, jurisdiction should in the first place be determined according to the criterion of proximity. Consequently, jurisdiction should lie with the Member State of the habitual residence of the child, except for certain situations set out in this Regulation, for instance, where there is a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

(21) Where no proceedings in matters of parental responsibility are yet pending and the habitual residence of the child changes following a lawful relocation, jurisdiction should follow the child in order to maintain the proximity. For proceedings already pending, legal certainty and the efficiency of justice justify maintaining this jurisdiction until those proceedings have resulted in a final decision or have otherwise come to an end. The court before which proceedings are pending should, however, be entitled in certain circumstances to transfer jurisdiction to the Member State where the child is living following a lawful relocation.

(22) In cases of the wrongful removal or retention of a child, and without prejudice to a possible choice of court pursuant to this Regulation, the courts of the Member State of the habitual residence of the child should retain their jurisdiction until a new habitual residence in another Member State has been established and some specific conditions are fulfilled. Member States which have concentrated jurisdiction should consider enabling the court seised with the return application under the 1980 Hague Convention to exercise also the jurisdiction agreed upon or accepted by the parties pursuant to this Regulation in matters of parental responsibility where agreement of the parties was reached in the course of the return proceedings. Such agreements should include agreements both on the return and the non-return of the child. If non-return is agreed, the child should remain in the Member State of the new habitual residence and jurisdiction for any future

custody proceedings there should be determined on the basis of the new habitual residence of the child.

(23) Under specific conditions laid down by this Regulation, it should be possible for jurisdiction in matters of parental responsibility also to be established in a Member State where proceedings for divorce, legal separation or marriage annulment are pending between the parents, or in another Member State with which the child has a substantial connection and which the parties have either agreed upon in advance, at the latest at the time the court is seised, or accepted expressly in the course of those proceedings, even if the child is not habitually resident in that Member State, provided that the exercise of such jurisdiction is in the best interests of the child. According to the case-law of the Court of Justice, anyone other than the parents who, according to national law, has the capacity of a party to the proceedings commenced by the parents, should be considered a party to the proceedings for the purposes of this Regulation and therefore, opposition by that party to the choice of jurisdiction made by the parents of the child in question, after the date on which the court was seised, should preclude the acceptance of prorogation of jurisdiction by all the parties to the proceedings at that date from being established. Before exercising its jurisdiction based on a choice of court agreement or acceptance the court should examine whether this agreement or acceptance was based on an informed and free choice of the parties concerned and not a result of one party taking advantage of the predicament or weak position of the other party. The acceptance of jurisdiction in the course of the proceedings should be recorded by the court in accordance with national law and procedure.

(24) Any agreed or accepted jurisdiction should cease, unless otherwise agreed by the parties, as soon as a decision in those proceedings on matters of parental responsibility is no longer subject to ordinary appeal or the proceedings have come to an end for another reason, in order to respect the requirement of proximity for any new proceedings in the future.

(25) Where the habitual residence of a child cannot be established and jurisdiction cannot be determined on the basis of a choice of court agreement, the courts of the Member State where the child is present should have jurisdiction. This presence rule should also apply to refugee children and children internationally displaced because of disturbances occurring in their Member State of habitual residence. However, in light of this Regulation in conjunction with Article 52(2) of the 1996 Hague Convention, this jurisdiction rule should only apply to children who had their habitual residence in a Member State before the displacement. Where the habitual residence of the child before the displacement was in a third State, the jurisdiction rule of the 1996 Hague Convention on refugee children and internationally displaced children should apply.

(26) In exceptional circumstances, a court of the Member State of habitual residence of the child might not be the most appropriate court to deal with the case. As an exception and under certain conditions, while under no obligation to do so, the court having jurisdiction should be able, to transfer its jurisdiction in a specific case to a court of another Member State if this court is better placed to assess the best interests of the child in the particular case. According to the case-law of the Court of Justice, the transfer of jurisdiction in matters of parental responsibility, by a court of a Member State, should be made only to a court of another Member State with which the child concerned has a 'particular connection'. This Regulation should set out an exhaustive list of the decisive elements of such 'particular connection'. The court having jurisdiction should make the request to the court of another Member State only if its prior decision to stay the proceedings and make a request for transfer of jurisdiction has become final where that decision can be appealed under national law.

(27) In exceptional circumstances and considering the best interests of the child in the particular case, a court of a Member State not having jurisdiction under this Regulation, but a particular connection with the child in accordance with this

Regulation, should be able to request a transfer of jurisdiction from the competent court of the Member State of the habitual residence of the child. That should, however, not be permitted in cases of wrongful removal or retention of the child. It should be for the national law of the requested Member State to identify this specific competent court.

(28) A transfer of jurisdiction, whether requested by a court wishing to transfer its jurisdiction or by a court wishing to obtain jurisdiction, should have effect only for the particular case in which it is made. Once the proceedings for which the transfer of jurisdiction was requested and granted have come to an end, the transfer should not produce any effect for future proceedings.

(29) Where no court of a Member State has jurisdiction pursuant to this Regulation, jurisdiction should be determined, in each Member State, by the laws of that Member State. The term 'laws of that Member State' should include international instruments in force in that Member State.

(30) This Regulation should not prevent the courts of a Member State not having jurisdiction over the substance of the matter from taking provisional, including protective, measures in urgent cases, with regard to the person or property of a child present in that Member State. Those measures should not be recognised and enforced in any other Member State under this Regulation, with the exception of measures taken to protect the child from a grave risk as referred to in point (b) of Article 13(1) of the 1980 Hague Convention. Measures taken to protect the child from such risk should remain in force until a court of the Member State of the habitual residence of the child has taken the measures it considers appropriate. Insofar as the protection of the best interests of the child so requires, the court should inform, directly or through the Central Authorities, the court of the Member State having jurisdiction over the substance of the matter under this Regulation about the measures taken. The failure to provide such information should, however, not as such be a ground for the non-recognition of the measure.

(31) A court only having jurisdiction for provisional, including protective measures should, if seised with an application concerning the substance of the matter, declare of its own motion that it has no jurisdiction if a court of another Member State has jurisdiction as to the substance of the matter under this Regulation.

(32) If the outcome of proceedings before a court of a Member State not having jurisdiction under this Regulation depends on the determination of an incidental question falling within the scope of this Regulation, the courts of that Member State should not be prevented by this Regulation from determining that question. Therefore, if the object of the proceedings is, for instance, a succession dispute in which the child is involved and a guardian ad litem needs to be appointed to represent the child in those proceedings, the Member State having jurisdiction for the succession dispute should be allowed to appoint the guardian for the pending proceedings, regardless of whether it has jurisdiction for matters of parental responsibility under this Regulation. Any such determination should only produce effects in the proceedings for which it was made.

(33) If the validity of a legal act undertaken or to be undertaken on behalf of a child in succession proceedings before a court of a Member State requires permission or approval by a court, a court in that Member State should be able to decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation. The term 'legal act' should include, for example, the acceptance or rejection of inheritance or an agreement between the parties on the sharing-out or the distribution of the estate.

(34) This Regulation should be without prejudice to the application of public international law concerning diplomatic immunity. Where jurisdiction under this Regulation cannot be exercised due to diplomatic immunity in accordance with international law, jurisdiction should be exercised in accordance with national law in a Member State in which the person concerned does not enjoy such immunity.

(35) This Regulation defines at what time a court is deemed to be seised for the

purposes of this Regulation. In light of the two different systems existing in the Member States, which either require the document instituting the proceedings to be served upon the respondent first, or to be lodged with the court first, it should be sufficient for the first step under national law to have been taken, provided that the applicant has not subsequently failed to take any steps that he or she was required to take under national law in order to have the second step effected. Taking into account the growing importance of mediation and other methods of alternative dispute resolution, also during court proceedings, in accordance with the case-law of the Court of Justice, a court should also be deemed to be seised at the time when the document instituting the proceedings or an equivalent document is lodged with the court in cases where the proceedings have in the meantime been suspended, with a view to finding an amicable solution, upon application of the party who instituted them, without the document instituting the proceedings having yet been served upon the respondent and without the respondent having had knowledge about the proceedings or having participated in them in any way, provided that the party who instituted the proceedings has not subsequently failed to take any steps that he or she was required to take to have service effected on the respondent. According to the case-law of the Court of Justice, in the case of *lis pendens*, the date on which a mandatory conciliation procedure was lodged before a national conciliation authority should be considered as the date on which a 'court' is deemed to be seised.

(36) Regulation (EC) No 1393/2007 of the European Parliament and of the Council should apply to the service of documents in proceedings instituted pursuant to this Regulation.

(37) A court of a Member State seised of a case over which it has no jurisdiction as to the substance of the matter under this Regulation and over which a court of another Member State has jurisdiction as to the substance of the matter under this Regulation should declare of its own motion that it has no jurisdiction. However, a court of a Member State having a particular connection with the child in accordance with this Regulation should have the discretion to request a transfer of jurisdiction under this Regulation, but not an obligation to do so.

(38) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable decisions will not be given in different Member States. There should be a clear and effective mechanism for resolving cases of *lis pendens* and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation, that time should be defined autonomously. However, in order to enhance the effectiveness of exclusive choice-of-court agreements, the provisions of this Regulation on *lis pendens* should not stand in the way where parents confer exclusive jurisdiction on the courts of a Member State.

(39) Proceedings in matters of parental responsibility under this Regulation as well as return proceedings under the 1980 Hague Convention should, as a basic principle, provide the child who is subject to those proceedings and who is capable of forming his or her own views, in accordance with the case-law of the Court of Justice, with a genuine and effective opportunity to express his or her views and when assessing the best interests of the child, due weight should be given to those views. The opportunity of the child to express his or her views freely in accordance with Article 24(1) of the Charter and in the light of Article 12 of the UN Convention on the Rights of the Child plays an important role in the application of this Regulation. The Regulation should, however, leave the question of who will hear the child and how the child is heard to be determined by national law and procedure of the Member States. Consequently, it should not be the purpose of this Regulation to set out whether the child should be heard by the judge in person or by a specially trained expert reporting to the court afterwards, or whether the child should be heard in the courtroom or in another place or through other

means. In addition, while remaining a right of the child, hearing the child cannot constitute an absolute obligation, but must be assessed taking into account the best interests of the child, for example, in cases involving agreements between the parties.

Whilst, according to the case-law of the Court of Justice, it is not a requirement of Article 24 of the Charter and of Regulation (EC) No 2201/2003 that the court of the Member State of origin obtain the views of the child in every case by means of a hearing, and that that court thus retains a degree of discretion, the case-law also provides that, where that court thus decides to provide the opportunity for the child to be heard, the court is required to take all measures which are appropriate to the arrangement of such a hearing, having regard to the best interests of the child and the circumstances of each individual case, in order to ensure the effectiveness of those provisions, and to offer to the child a genuine and effective opportunity to express his or her views. The court of the Member State of origin should, in so far as possible and always taking into consideration the best interests of the child, use all means available to it under national law as well as the specific instruments of international judicial cooperation, including, when appropriate, those provided for by Council Regulation (EC) No 1206/2001.

(40) In cases of the wrongful removal or retention of a child, the return of the child should be obtained without delay, and to that end the 1980 Hague Convention should continue to apply as complemented by this Regulation, in particular Chapter III.

(41) In order to conclude the return proceedings under the 1980 Hague Convention as quickly as possible, Member States should, in coherence with their national court structure, consider concentrating jurisdiction for those proceedings upon as limited a number of courts as possible. Jurisdiction for child abduction cases could be concentrated in one single court for the whole country or in a limited number of courts, using, for example, the number of appellate courts as point of departure and concentrating jurisdiction for international child abduction cases upon one court of first instance within each district of a court of appeal.

(42) In return proceedings under the 1980 Hague Convention, the courts at every instance should give their decision within six weeks, except where exceptional circumstances make this impossible. The fact that means of alternative dispute resolution are used should not as such be considered an exceptional circumstance allowing the timeframe to be exceeded. However, exceptional circumstances might arise while using such means or as a result of them. For a court of first instance, the timeframe should start at the moment that the court is seised. For a court of higher instance, it should start at the moment that all required procedural steps have been taken. Such steps could include, depending on the legal system concerned, service of the appeal upon the respondent, either within the Member State where the court is located or within another Member State, transmission of the file and the appeal to the appellate court in Member States where the appeal has to be lodged with the court whose decision is appealed, or an application by a party to convene a hearing where such an application is required under national law. Member States should also consider limiting the number of appeals possible against a decision granting or refusing the return of a child under the 1980 Hague Convention to one.

(43) In all cases concerning children, and in particular in cases of international child abduction, courts should consider the possibility of achieving solutions through mediation and other appropriate means, assisted, where appropriate, by existing networks and support structures for mediation in cross-border parental responsibility disputes. Such efforts should not, however, unduly prolong the return proceedings under the 1980 Hague Convention. Moreover, mediation might not always be appropriate, especially in cases of domestic violence. Where in the course of return proceedings under the 1980 Hague Convention, parents reach agreement on the return or non-return of the child, and also on matters of parental

responsibility, this Regulation should, under certain circumstances, make it possible for them to agree that the court seised under the 1980 Hague Convention should have jurisdiction to give binding legal effect to their agreement, either by incorporating it into a decision, approving it or by using any other form provided by national law and procedure. Member States which have concentrated jurisdiction should therefore consider enabling the court seised with the return proceedings under the 1980 Hague Convention to exercise also the jurisdiction agreed upon or accepted by the parties pursuant to this Regulation in matters of parental responsibility where agreement of the parties was reached in the course of those return proceedings.

(44) The court of the Member State to or in which the child has been wrongfully removed or retained should be able to refuse the return in specific, duly justified cases, as permitted by the 1980 Hague Convention. Before doing so, it should consider whether appropriate measures of protection have been put in place or might be taken to protect the child from the grave risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention.

(45) Where a court considers refusing to return a child solely on the basis of point (b) of Article 13(1) of the 1980 Hague Convention, it should not refuse to return the child if either the party seeking the return of the child satisfies the court, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after his or her return. Examples for such arrangements could include a court order from that Member State prohibiting the applicant to come close to the child, a provisional, including protective measure from that Member State allowing the child to stay with the abducting parent who is the primary carer until a decision on the substance of rights of custody has been made in that Member State following the return, or the demonstration of available medical facilities for a child in need of treatment. Which type of arrangement is adequate in the particular case should depend on the concrete grave risk to which the child is likely to be exposed by the return without such arrangements. The court seeking to establish whether adequate arrangements have been made should primarily rely on the parties and, where necessary and appropriate, request the assistance of Central Authorities or network judges, in particular within the European Judicial Network in civil and commercial matters, as established by Council Decision 2001/470/EC, and the International Hague Network of Judges.

(46) Where appropriate, when ordering the return of the child, it should be possible for the court to order any provisional, including protective measures pursuant to this Regulation which it considers necessary to protect the child from the grave risk of physical or psychological harm entailed by the return which would otherwise lead to a refusal of return. Such provisional measures and their circulation should not delay the return proceedings under the 1980 Hague Convention or undermine the delimitation of jurisdiction between the court seised with the return proceedings under the 1980 Hague Convention and the court having jurisdiction on the substance of parental responsibility under this Regulation. If necessary, the court seised with the return proceedings under the 1980 Hague Convention should consult with the court or competent authorities of the Member State of the habitual residence of the child, with the assistance of Central Authorities or network judges, in particular within the European Judicial Network in civil and commercial matters and the International Hague Network of Judges. Those measures should be recognised and enforced in all other Member States including the Member States having jurisdiction under this Regulation until a court of such a Member State has taken the measures it considers appropriate. Such provisional, including protective, measures could include, for instance, that the child should continue to reside with the primary care giver or how contact with the child should take place after return until the court of the habitual residence of the child has taken measures it considers appropriate. This should be without prejudice to any measure or decision of the court of the habitual residence taken after the return of the child.

(47) It should be possible for a decision ordering the return of the child to be declared provisionally enforceable, notwithstanding any appeal, where the return of the child before the decision on the appeal is required by the best interests of the child. National law can specify by which court the decision can be declared provisionally enforceable.

(48) Where the court of the Member State to or in which the child has been wrongfully removed or retained decides to refuse the return of the child under the 1980 Hague Convention, in its decision it should refer explicitly to the relevant articles of the 1980 Hague Convention on which the refusal was based. Regardless of whether such a refusal decision is final or still subject to appeal, it might however be replaced by a subsequent decision, given in custody proceedings by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. In the course of these proceedings, all the circumstances, including, but not limited to, the conduct of the parents, should be thoroughly examined, taking into account the best interests of the child. Should the resulting decision on the substance of rights of custody entail the return of the child, the return should take place without any special procedure being required for the recognition and enforcement of that decision in any other Member State.

(49) The court refusing the return of the child on the sole basis of point (b) of Article 13(1), or of Article 13(2), or both, of the 1980 Hague Convention should, of its own motion, issue a certificate using the appropriate form set out in this Regulation. The purpose of this certificate is to inform the parties of the possibility to seise a court in the Member State where the child was habitually resident immediately before the wrongful removal or retention, within three months of the notification of the decision refusing the return of the child, with applications regarding the substance of rights of custody, or, if that court is already seised, to communicate to the court relevant documents relating to the return proceedings.

(50) Where proceedings on the substance of rights of custody are already pending in the Member State where the child was habitually resident immediately before the wrongful removal or retention at the time that a court seised with a return application under the 1980 Hague Convention refuses the return of the child on the sole basis of point (b) of Article 13(1), or of Article 13(2), or both, of the 1980 Hague Convention, the court which refused the return of the child should, if it is aware of those proceedings, transmit within one month of the date of its decision a copy of the decision, the appropriate certificate and, where applicable, a transcript, summary or minutes of the hearing as well as any other documents it considers relevant to the court seised with the proceedings on the substance of rights of custody. The term 'any other documents it considers relevant' should refer to any documents which contain information that might have a bearing on the outcome of those custody proceedings, if such information is not already contained in the decision refusing return.

(51) Where no proceedings on the substance of rights of custody are yet pending in the Member State where the child was habitually resident immediately before the wrongful removal or retention and a party seises a court of that Member State within three months following the date of the notification of the decision not to return the child, that party should submit to the court seised with the application on the substance of rights of custody, a copy of the decision not to return the child under the 1980 Hague Convention, the appropriate certificate and, where applicable, a transcript, summary or minutes of the hearing. This does not preclude the court seised from asking for any additional documents it considers relevant, which contain information that might have a bearing on the outcome of the proceedings on the substance of rights of custody, if such information is not already contained in the decision refusing return.

(52) If the court having jurisdiction over the substance of rights of custody has been seised by a party within three months of the notification of the decision

refusing the return of the child under the 1980 Hague Convention, or if custody proceedings were already pending before that court at the moment it received that decision from the court having refused the return of the child, any decision resulting from those proceedings regarding the substance of rights of custody which entails the return of the child to that Member State should be enforceable in any other Member State in accordance with Section 2 of Chapter IV of this Regulation without any special procedure being required and without any possibility of opposing its recognition. This should apply unless and to the extent that irreconcilability with a later decision relating to parental responsibility concerning the same child is found to exist, provided that a certificate for 'privileged decisions' has been issued for the decision on the substance of rights of custody entailing the return of the child. If the court having jurisdiction over the substance of rights of custody is seised after the three months have expired, or the conditions for issuing a certificate for such privileged decisions are not met, the resulting decision on the substance of rights of custody should be recognised and enforced in other Member States in accordance with Section 1 of Chapter IV of this Regulation.

(53) Without prejudice to other Union instruments, where it is not possible to hear a party or a child in person, and where the technical means are available, the court might consider holding a hearing through videoconference or by means of any other communication technology unless, on account of the particular circumstances of the case, the use of such technology would not be appropriate for the fair conduct of the proceedings.

(54) Mutual trust in the administration of justice in the Union justifies the principle that decisions in matrimonial matters and in matters of parental responsibility given in a Member State should be recognised in all Member States without the need for any recognition procedure. In particular, when presented with a decision given in another Member State and granting divorce, legal separation or marriage annulment which can no longer be challenged in the Member State of origin, the competent authorities of the requested Member State should recognise the decision by operation of law without any special procedure being required and update their civil status records accordingly. It is left to national law whether the grounds for refusal may be raised by a party or ex officio as provided by national law. This does not preclude any interested party from applying, in accordance with this Regulation, for a decision that there are no grounds for refusal of recognition as referred to in this Regulation. It should be for the national law of the Member State where such application is made to determine who can be considered as an interested party entitled to make such application.

(55) The recognition and enforcement of decisions, authentic instruments and agreements given in a Member State should be based on the principle of mutual trust. Therefore the grounds for non-recognition should be kept to the minimum in the light of the underlying aim of this Regulation which is to facilitate recognition and enforcement and to effectively protect the best interests of the child.

(56) The recognition of a decision should be refused only if one or more of the grounds for refusal of recognition provided for in this Regulation are present. The list of grounds for refusal of recognition in this Regulation is exhaustive. It should not be possible to invoke as grounds for refusal, grounds which are not listed in this Regulation, such as, for example, a violation of the *lis pendens* rule. In matters of parental responsibility, a later decision always supersedes an earlier decision with effect for the future to the extent that they are irreconcilable.

(57) As concerns the opportunity given to a child to express his or her views, it should be for the court of origin to decide about the appropriate method for hearing a child. Therefore, it should not be possible to refuse recognition of a decision on the sole ground that the court of origin used a different method to hear the child than a court in the Member State of recognition would use. The Member State where recognition is invoked should not refuse recognition where one of the exceptions from this particular ground for refusal as permitted by this Regulation

applies. The effect of those exceptions is that it should not be possible for a court in the Member State of enforcement to refuse to enforce a decision on the sole ground that the child was not given the opportunity to express his or her views, taking into account his or her best interests, if the proceedings only concerned the property of the child and provided that giving such an opportunity was not required in light of the subject matter of the proceedings, or in the case of the existence of serious grounds taking into account, in particular, the urgency of the case. Such serious grounds could be given, for instance, where there is imminent danger for the child's physical and psychological integrity or life and any further delay might bear the risk that this danger materialises.

(58) In addition, the aim of making cross-border litigation concerning children less time consuming and costly justifies the abolition of the declaration of enforceability or the registration for enforcement, as applicable, prior to enforcement in the Member State of enforcement for all decisions in matters of parental responsibility. While Regulation (EC) No 2201/2003 only abolished this requirement for certain decisions granting rights of access and certain decisions entailing the return of a child, this Regulation should abolish it for the cross-border enforcement of all decisions in matters of parental responsibility while still retaining an even more favourable treatment of certain decisions granting rights of access and certain decisions entailing the return of a child. As a result, subject to this Regulation, a decision given by the court of any other Member State should be treated as if it had been given in the Member State of enforcement.

(59) Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, the circulation of those measures should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the decision containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, their circulation should be confined, under this Regulation, to measures taken in international child abduction cases and aimed at protecting the child from the grave risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention. Those measures should apply until a court of a Member State having jurisdiction over the substance of the matter under this Regulation has taken the measures it considers appropriate.

(60) As enforcement procedures could be judicial or extra-judicial depending on national law, 'authorities competent for enforcement' could include courts, bailiffs and any other authorities as determined by national law. Where, in addition to authorities competent for enforcement, courts are also mentioned in this Regulation, this should cover cases where, under national law, a body other than a court is the authority competent for enforcement, but certain decisions are reserved to courts, either from the outset or in the form of reviewing the acts of the authority competent for enforcement. It should be for the authority competent for enforcement or the court of the Member State of enforcement to order, take or arrange for specific measures to be taken at the enforcement stage, such as any non-coercive measures which might be available under the national law of that Member State, or any coercive measures which might be available under that law, including fines, imprisonment or the fetching of the child by a bailiff.

(61) In order to facilitate enforcement of decisions on the exercise of rights of access from another Member State, authorities competent for enforcement or the courts in the Member State of enforcement should be entitled to specify details regarding practical circumstances or legal conditions required under the law of the Member State of enforcement. The arrangements provided for in this Regulation should facilitate enforcement of a decision in the Member State of enforcement,

which might not otherwise be enforceable because of its vagueness, so that the authority competent for enforcement or the court of enforcement can make the decision more concrete and precise. Also any other arrangements to comply with legal requirements under the national enforcement law of the Member State of enforcement, such as, for example, the participation of a child protection authority or a psychologist at the enforcement stage, should be made in the same way. However, any such arrangements should not interfere with, or go beyond, the essential elements of the decision on the rights of access. Moreover, the power under this Regulation to adjust measures should not allow the court of enforcement to replace measures that are unknown in the law of the Member State of enforcement, with different measures.

(62) The enforcement in a Member State of a decision given in another Member State without a declaration of enforceability should not jeopardise the respect for the rights of the defence. Therefore, the person against whom enforcement is sought should be able to apply for refusal of the recognition or enforcement of a decision if he or she considers one of the grounds for refusal of recognition or enforcement of this Regulation to be present. It is for national law to determine whether the grounds for refusal of recognition set out in this Regulation are to be examined *ex officio* or upon application. Therefore, the same examination should be possible in the context of the refusal of enforcement. The application of any national ground for refusal should not have the effect of extending the conditions and modalities of the grounds provided for under this Regulation.

(63) A party challenging the enforcement of a decision given in another Member State should, to the extent possible and in accordance with the legal system of the Member State of enforcement, be able to do so in the procedure for enforcement and should be able to raise, within one procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under the law of the Member State where enforcement is sought which would continue to apply because they are not incompatible with the grounds provided for in this Regulation. Those grounds could include, for example, challenges based on formal errors under national law in an act of enforcement or on the assertion that the action required by the decision has already been performed or has become impossible, for instance, in case of force majeure, serious illness of the person to whom the child is to be handed over, the imprisonment or death of that person, the fact that the Member State to which the child is to be returned has turned into a war zone after the decision was given, or the refusal of enforcement of a decision which under the law of the Member State where enforcement is sought does not have any enforceable content and cannot be adjusted to this effect.

(64) In order to inform the person against whom enforcement is sought of the enforcement of a decision given in another Member State, the certificate established under this Regulation, if necessary accompanied by the decision, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service. According to the case-law of the Court of Justice, the party against whom enforcement is sought has a right to an effective remedy, which includes the possibility of commencing proceedings to challenge the enforceability of the decision prior to the actual start of enforcement.

(65) In matters of parental responsibility, enforcement will always concern a child and in many cases the handover of a child to a person other than the person with whom the child is residing at that time and/or the relocation of the child to another Member State. The primary objective should thus be to strike the right balance between the right of the applicant, as a principle, to obtain implementation of a decision as quickly as possible also in cross-border cases within the Union and, if need be, also by applying coercive measures, and the need to limit, as far as possible, exposure of the child to such possibly traumatising coercive enforcement

measures in cases where this cannot be avoided. This assessment should be made by the authorities competent for enforcement and the courts in each Member State in the light of each individual case.

(66) This Regulation seeks to establish a level playing field as regards the cross-border enforcement of decisions in matters of parental responsibility among Member States. In a number of Member States, these decisions are already enforceable even if they are still subject to appeal, or already under appeal. In other Member States, only a final decision no longer subject to ordinary appeal is enforceable. In order to cater for situations of urgency, this Regulation therefore provides that certain decisions in matters of parental responsibility might be declared provisionally enforceable by the court of the Member State of origin even if still subject to appeal, namely decisions ordering the return of a child under the 1980 Hague Convention and decisions granting rights of access.

(67) In enforcement procedures concerning children, however, it is important for the authorities competent for enforcement or the courts to be able to react swiftly to a relevant change of circumstances, including challenges against the decision in the Member State of origin, loss of enforceability of the decision and obstacles or emergency situations they encounter at the enforcement stage. Therefore, the enforcement proceedings should be suspended, upon application or of the authority's or court's own motion, where the enforceability of the decision is suspended in the Member State of origin. The authority or court competent for enforcement should, however, not be obliged to investigate actively whether in the meantime enforceability has been suspended, following an appeal or otherwise, in the Member State of origin if there is no indication that this is the case. Moreover, the suspension or refusal of enforcement in the Member State of enforcement should be upon application and, even where one or more of the grounds contained in or permitted by this Regulation are found to exist, the suspension or refusal of enforcement in the Member State of enforcement should be left to the discretion of the authority competent for enforcement or the court.

(68) Where the decision is still subject to appeal in the Member State of origin and the time for lodging an ordinary appeal has not yet expired, the authority competent for enforcement or the court in the Member State of enforcement should have the discretion, upon application, to suspend, the enforcement proceedings. In those cases it may specify the time-limit by which any appeal is to be lodged in the Member State of origin, in order to obtain or maintain the suspension of enforcement proceedings. The specification of a time-limit should only have effect for the suspension of the enforcement proceedings and should not affect the deadline for lodging an appeal according to the procedural rules of the Member State of origin.

(69) In exceptional cases, it should be possible for the authority competent for enforcement or the court to suspend the enforcement proceedings if enforcement would expose the child to a grave risk of physical or psychological harm due to temporary impediments which have arisen after the decision was given, or by virtue of any other significant change of circumstances. Enforcement should be resumed as soon as the grave risk of physical or psychological harm ceases to exist. If it continues to exist, however, before refusing enforcement any appropriate steps should be taken in accordance with national law and procedure including, where appropriate, with the assistance of other relevant professionals, such as social workers or child psychologists, to try to ensure implementation of the decision. In particular, the authority competent for enforcement or the court should, in accordance with national law and procedure, try to overcome any impediments created by a change of circumstances, such as, for example, manifest objection of the child voiced only after the decision was given which is so strong that, if disregarded, it would amount to a grave risk of physical or psychological harm for the child.

(70) Authentic instruments and agreements between parties on legal separation and divorce which have binding legal effect in one Member State should be

treated as equivalent to 'decisions' for the purpose of the application of the rules on recognition. Authentic instruments and agreements between parties in matters of parental responsibility which are enforceable in one Member State should be treated as equivalent to 'decisions' for the purpose of the application of the rules on recognition and enforcement.

(71) Although the obligation to provide the child with the opportunity to express his or her views under this Regulation should not apply to authentic instruments and agreements, the right of the child to express his or her views should continue to apply pursuant to Article 24 of the Charter and in light of Article 12 of the UN Convention on the Rights of the Child as implemented by national law and procedure. The fact that the child was not given the opportunity to express his or her views should not automatically be a ground of refusal of recognition and enforcement of authentic instruments and agreements in matters of parental responsibility.

(72) In matters of parental responsibility, Central Authorities should be designated in all Member States. Member States should consider designating the same Central Authority for this Regulation as designated for the 1980 and 1996 Hague Conventions. Member States should ensure that Central Authorities have adequate financial and human resources to enable them to carry out the tasks assigned to them under this Regulation.

(73) The provisions of this Regulation on cooperation in matters of parental responsibility should not apply to the processing of return applications under the 1980 Hague Convention which, in accordance with Article 19 of that Convention and the established case-law of the Court of Justice, are not proceedings on the substance of parental responsibility. The application of the 1980 Hague Convention should, however, be complemented by the provisions of this Regulation on international child abduction and by the Chapter of this Regulation on recognition and enforcement and the Chapter on general provisions.

(74) Central Authorities should assist courts and competent authorities, and in certain cases also holders of parental responsibility, in cross-border procedures and cooperate both in general matters and in specific cases, including for the purposes of promoting the amicable resolution of family disputes.

(75) Except in urgent cases, and without prejudice to the direct cooperation and communication between courts permitted under this Regulation, requests pursuant to this Regulation concerning cooperation in matters of parental responsibility could be made by courts and competent authorities and should be submitted to the Central Authority of the Member State of the requesting court or competent authority. Certain requests could also be made by holders of parental responsibility and should be submitted to the Central Authority of the applicant's habitual residence. Such requests should include requests to provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions in the territory of the requested Central Authority, in particular concerning rights of access and the return of the child, including, where necessary, information on how to obtain legal aid; requests to facilitate agreement between holders of parental responsibility through mediation or other means of alternative dispute resolution, and requests for a court or competent authority to consider the need to take measures for the protection of the person or property of the child.

(76) An example of an urgent case permitting direct initial contact with the court or competent authority of the requested Member State is a direct request to the competent authority of another Member State to consider the need to take measures for the protection of the child where the child is presumed to be at imminent risk. The obligation to proceed through Central Authority channels should only be mandatory for initial requests; any subsequent communication with the court, competent authority or applicant might also take place directly.

(77) Central Authorities or competent authorities should not be precluded from entering into or maintaining existing agreements or arrangements with Central

Authorities or competent authorities of one or more other Member States allowing direct communications in their mutual relations. Competent authorities should inform their Central Authorities about such agreements or arrangements.

(78) In specific cases in matters of parental responsibility which fall within the scope of this Regulation, Central Authorities should cooperate with each other in providing assistance to courts and competent authorities as well as to holders of parental responsibility. The assistance provided by the requested Central Authority should in particular include locating the child, either directly or through courts, competent authorities or other bodies, where this is necessary for carrying out a request under this Regulation, and providing any other information relevant in procedures in matters of parental responsibility.

(79) Requested Central Authorities should also take all appropriate steps to facilitate communication between courts, where necessary, in particular for the application of the rules on transfer of jurisdiction, on provisional, including protective measures in urgent cases, in particular where they are related to international child abduction and aimed at protecting the child from the grave risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention, and on *lis pendens* and dependent actions. To this effect, it is possible that providing information for further direct communication is sufficient in some cases, for example, providing contact details of child welfare authorities, network judges or the competent court.

(80) In order to achieve the objectives of this Regulation and without prejudice to any requirements under its national procedural law, a requesting court or competent authority should have the discretion to choose freely between the different channels available to it for obtaining the necessary information.

(81) Where a request with supporting reasons for a report or any other information relevant in procedures in matters of parental responsibility in the requesting Member State is made, the Central Authorities, directly or through the courts, competent authorities or other bodies of the requested Member State should carry out such a request. The request should contain, in particular, a description of the procedures for which the information is needed and the factual situation that gave rise to those procedures.

(82) Where a court of a Member State has already given a decision in matters of parental responsibility or is contemplating such a decision and the implementation of the decision is to take place in another Member State, the court should be able to request that the courts or competent authorities of that other Member State assist in the implementation of the decision. This should apply, for instance, to decisions granting supervised access which is to be exercised in a Member State other than the Member State where the court ordering access is located or involving any other accompanying measures of the courts or competent authorities in the Member State where the decision is to be implemented.

(83) Where a court or competent authority of a Member State considers the placement of a child in another Member State, a consultation procedure for obtaining consent should be carried out prior to the placement. The court or competent authority considering the placement should obtain the consent of the competent authority of the Member State in which the child would be placed before ordering or arranging the placement. Moreover, in line with the case-law of the Court of Justice, Member States should establish clear rules and procedures for the purposes of consent to be obtained pursuant to this Regulation, in order to ensure legal certainty and expedition. The procedures should, *inter alia*, enable the competent authority to grant or refuse its consent promptly. The absence of a reply within three months should not be understood as consent and without consent the placement should not take place. The request for consent should include at least a report on the child together with the reasons for the proposed placement or provision of care, the expected duration of the placement, information on any contemplated funding, supplemented by any other information which the requested Member State might consider pertinent such as any envisaged supervision of the

measure, arrangements for contact with the parents, other relatives or other persons with whom the child has a close relationship, or the reasons why such contact is not contemplated in light of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Taking into consideration the case-law of the Court of Justice, where consent to placement has been given for a specified period of time, that consent should not apply to decisions or arrangements extending the duration of the placement. In such circumstances, a new request for consent should be made.

(84) Where a decision on the placement of a child in institutional or foster care is being contemplated in the Member State of the habitual residence of the child, the court should consider, at the earliest stage of the proceedings, appropriate measures to ensure respect of the rights of the child, in particular the right to preserve his or her identity and the right to maintain contact with the parents, or, where appropriate, with other relatives, in light of Articles 8, 9 and 20 of the UN Convention on the Rights of the Child. Where the court is aware of a close connection of the child with another Member State, appropriate measures could in particular include, where point (b) of Article 37 of the Vienna Convention on Consular Relations is applicable, a notification to the Consular body of that Member State. Such awareness might also be raised by information provided by the Central Authority of that other Member State. Appropriate measures could also include a request pursuant to this Regulation to that Member State for information about a parent, a relative or other persons who could be suitable to care for the child. Moreover, depending on the circumstances, the court might also request information on procedures and decisions concerning a parent or siblings of the child. The best interests of the child should remain the paramount consideration. In particular, none of those provisions should affect national law or procedure applicable to any placement decision made by the court or competent authority in the Member State contemplating the placement. In particular, those provisions should not place any obligation on the authorities of the Member State having jurisdiction to place the child in the other Member State or further involve that Member State in the placement decision or proceedings.

(85) As time is of the essence in matters of parental responsibility, the information requested under the provisions of this Regulation on cooperation, including on collecting and exchanging information relevant in procedures in matters of parental responsibility, and the decision granting or refusing consent for the placement of a child in another Member State should be transmitted to the requesting Member State by the Central Authority of the requested Member State no later than three months following the receipt of the request, except where exceptional circumstances make this impossible. This should include the obligation of the competent national authority to provide the information, or explain why it cannot be provided, to the requested Central Authority in such time as to enable it to comply with that timeframe. Nonetheless, all competent authorities involved should strive to provide the reply even more quickly than within this maximum timeframe.

(86) The fact that the meetings of Central Authorities are to be convened, in particular, by the Commission within the framework of the European Judicial Network in civil and commercial matters in compliance with Decision 2001/470/EC, should not preclude other meetings of the Central Authorities from being organised.

(87) Unless this Regulation provides otherwise, Regulation (EU) 2016/679 of the European Parliament and of the Council (9) should apply to the processing of personal data by the Member States carried out in application of this Regulation. In particular, in order not to jeopardise the carrying out of a request under this Regulation, for example for the return of the child in accordance with the 1980 Hague Convention or for a court to consider the need to take measures for the protection of the person or property of the child, the notification of the data subject as required by Article 14(1)–(4) of Regulation (EU) 2016/679, for example about

data requested for locating the child, may be deferred until the request for which this information is required has been carried out. This exception is made in accordance with Article 14(5) as well as points (f), (g), (i) and (j) of Article 23(1) of Regulation (EU) 2016/679. This should not preclude an intermediary, court or competent authority to which the information has been transmitted, from taking measures for the protection of the child, or causing such measures to be taken, where the child is at risk of harm or there are indications for such a risk.

(88) In cases where a disclosure or confirmation of the relevant information could jeopardise the health, safety or liberty of the child or another person, for example where domestic violence has occurred and a court ordered the new address of the child not to be disclosed to the applicant, this Regulation strives to strike a delicate balance. While this Regulation should provide that a Central Authority, court or competent authority should not disclose or confirm to the applicant or to a third party any information gathered or transmitted for the purposes of this Regulation if it determines that to do so could jeopardise the health, safety or liberty of the child or another person, it should nonetheless underline that that should not impede the gathering and transmitting of information by and between Central Authorities, courts and competent authorities in so far as necessary to carry out the obligations under this Regulation. This means that where possible and appropriate, it should be possible for an application to be processed under this Regulation without the applicant being provided with all information necessary to process it. For example, where national law so provides, a Central Authority might institute proceedings on behalf of an applicant without passing on the information about the child's whereabouts to the applicant. However, in cases where merely making the request could already jeopardise the health, safety or liberty of the child or another person, there should not be an obligation under this Regulation to make such request.

(89) In order to ensure that the certificates to be used in conjunction with the application of Chapters III and IV of this Regulation are kept up to date, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amendments to Annexes I to IX to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (10). In particular, to ensure equal participation in the preparation of delegated acts, the Council receives all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(90) Continuity between the 1998 Convention drawn up on the basis of Article K.3 of the Treaty on European Union on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters ('Brussels II Convention') (11), Regulation (EC) No 1347/2000, Regulation (EC) No 2201/2003 and this Regulation should be ensured to the extent that the provisions have remained unchanged, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation, including by the Court of Justice, of the Brussels II Convention and of the Regulations (EC) No 1347/2000 and (EC) No 2201/2003.

(91) It is recalled that for agreements with one or more third States concluded by a Member State before the date of its accession to the Union, Article 351 TFEU applies.

(92) The law applicable in matters of parental responsibility should be determined in accordance with the provisions of Chapter III of the 1996 Hague Convention. When applying that Convention in proceedings before a court of a Member State in which this Regulation applies, the reference in Article 15(1) of that

Convention to ‘the provisions of Chapter II’ of that Convention should be understood as referring to ‘the provisions of this Regulation’.

(93) For the proper functioning of this Regulation, the Commission should assess its application and propose such amendments as appear necessary.

(94) The Commission should make publicly available and update the information communicated by the Member States.

(95) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Regulation.

(96) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(97) The European Data Protection Supervisor was consulted in accordance with the second subparagraph of Article 41(2) and Article 46(d) of Regulation (EC) No 45/2001 of the European Parliament and of the Council (12) and delivered an opinion on 15 February 2018 (13).

(98) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States because of the differences between national rules governing jurisdiction and the recognition and enforcement of decisions, but can rather, by reason of the direct applicability and binding nature of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAS ADOPTED THIS REGULATION:

CHAPTER I SCOPE AND DEFINITIONS

Article 1. Scope

1. This Regulation applies in civil matters of:
 - (a) divorce, legal separation or marriage annulment;
 - (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.
2. The matters referred to in point (b) of paragraph 1 may, in particular, include:
 - (a) rights of custody and rights of access;
 - (b) guardianship, curatorship and similar institutions;
 - (c) the designation and functions of any person or body having charge of the person or property of a child, or representing or assisting a child;
 - (d) the placement of a child in institutional or foster care;
 - (e) measures for the protection of the child relating to the administration, conservation or disposal of the property of a child.
3. Chapters III and VI of this Regulation apply where the wrongful removal or retention of a child concerns more than one Member State, complementing the 1980 Hague Convention. Chapter IV of this Regulation applies to decisions ordering the return of a child to another Member State pursuant to the 1980 Hague Convention which have to be enforced in a Member State other than the Member State where the decision was given.
4. This Regulation does not apply to:
 - (a) the establishment or the contesting of a parent-child relationship;
 - (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

- (c) the name and forenames of a child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) measures taken as a result of criminal law offences committed by children.

Article 2. Definitions

1. For the purposes of this Regulation ‘decision’ means a decision of a court of a Member State, including a decree, order or judgment, granting divorce, legal separation, or annulment of a marriage, or concerning matters of parental responsibility.

For the purposes of Chapter IV, ‘decision’ includes:

(a) a decision given in one Member State and ordering the return of a child to another Member State pursuant to the 1980 Hague Convention which has to be enforced in a Member State other than the Member State where the decision was given;

(b) provisional, including protective, measures ordered by a court which by virtue of this Regulation has jurisdiction as to the substance of the matter or measures ordered in accordance with Article 27(5) in conjunction with Article 15;

For the purposes of Chapter IV, ‘decision’ does not include provisional, including protective, measures ordered by such a court without the respondent being summoned to appear, unless the decision containing the measure is served on the respondent prior to enforcement.

2. For the purposes of this Regulation the following definitions also apply:

(1) ‘court’ means any authority in any Member State with jurisdiction in the matters falling within the scope of this Regulation;

(2) ‘authentic instrument’ means a document which has been formally drawn up or registered as an authentic instrument in any Member State in the matters falling within the scope of this Regulation and the authenticity of which:

(a) relates to the signature and the content of the instrument; and

(b) has been established by a public authority or other authority empowered for that purpose. The Member States shall communicate those authorities to the Commission in accordance with Article 103;

(3) ‘agreement’ means, for the purposes of Chapter IV, a document which is not an authentic instrument, has been concluded by the parties in the matters falling within the scope of this Regulation and has been registered by a public authority as communicated to the Commission by a Member State in accordance with Article 103 for that purpose;

(4) ‘Member State of origin’ means the Member State in which the decision has been given, the authentic instrument has been formally drawn up or registered, or the agreement has been registered;

(5) ‘Member State of enforcement’ means the Member State in which enforcement of the decision, authentic instrument or agreement is sought;

(6) ‘child’ means any person below the age of 18 years;

(7) ‘parental responsibility’ means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by a decision, by operation of law or by an agreement having legal effect, including rights of custody and rights of access;

(8) ‘holder of parental responsibility’ means any person, institution or other body having parental responsibility for a child;

(9) ‘rights of custody’ includes rights and duties relating to the care of the person of a child and in particular the right to determine the place of residence of a child;

(10) ‘rights of access’ means rights of access to a child, including the right to

take a child to a place other than his or her habitual residence for a limited period of time;

(11) 'wrongful removal or retention' means the removal or retention of a child where:

(a) such removal or retention is in breach of rights of custody acquired by decision, by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

3. For the purposes of Articles 3, 6, 10, 12, 13, 51, 59, 75, 94 and 102 the concept of 'domicile' replaces the concept of 'nationality' for Ireland and the United Kingdom, and it has the same meaning as under each of the legal systems of those Member States.

CHAPTER II JURISDICTION IN MATRIMONIAL MATTERS AND IN MATTERS OF PARENTAL RESPONSIBILITY

Section 1

Divorce, legal separation and marriage annulment

Article 3. General jurisdiction

In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State:

- (a) in whose territory:
 - (i) the spouses are habitually resident,
 - (ii) the spouses were last habitually resident, insofar as one of them still resides there,
 - (iii) the respondent is habitually resident,
 - (iv) in the event of a joint application, either of the spouses is habitually resident,
 - (v) the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
 - (vi) the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is a national of the Member State in question; or
- (b) of the nationality of both spouses.

Article 4. Counterclaim

The court before which proceedings are pending on the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as that counterclaim falls within the scope of this Regulation.

Article 5. Conversion of legal separation to divorce

Without prejudice to Article 3, a court of a Member State that has given a decision granting a legal separation shall also have jurisdiction to convert that legal separation to a divorce, if the law of that Member State so provides.

Article 6. Residual jurisdiction

1. Subject to paragraph 2, where no court of a Member State has jurisdiction pursuant to Article 3, 4 or 5, jurisdiction shall be determined, in each Member State, by the laws of that State.

2. A spouse who is habitually resident in the territory of a Member State; or a national of a Member State, may be sued in another Member State only in accordance with Articles 3, 4 and 5.

3. As against a respondent who is not habitually resident in and is not a

national of a Member State, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

Section 2 Parental responsibility

Article 7. General jurisdiction

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 of this Article shall be subject to Articles 8 to 10.

Article 8. Continuing jurisdiction in relation to access rights

1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence shall, by way of exception to Article 7, retain jurisdiction, for three months following the move, to modify a decision on access rights given in that Member State before the child moved if the person granted access rights by the decision continues to have his or her habitual residence in the Member State of the child's former habitual residence.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.

Article 9. Jurisdiction in cases of the wrongful removal or retention of a child

Without prejudice to Article 10, in the case of the wrongful removal or retention of a child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

(i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no application for return has been lodged with the competent authorities of the Member State to which the child has been removed or where the child is being retained;

(ii) an application for return lodged by the holder of rights of custody has been withdrawn and no new application has been lodged within the time limit set in point (i);

(iii) an application for return lodged by the holder of rights of custody was refused by a court of a Member State on grounds other than point (b) of Article 13(1) or Article 13(2) of the 1980 Hague Convention and that decision is no longer subject to ordinary appeal;

(iv) no court was seised as referred to in Article 29(3) and (5) in the Member State where the child was habitually resident immediately before the wrongful removal or retention;

(v) a decision on rights of custody that does not entail the return of the child has been given by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

Article 10. Choice of court

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met:

- (a) the child has a substantial connection with that Member State, in particular by virtue of the fact that:
 - (i) at least one of the holders of parental responsibility is habitually resident in that Member State;
 - (ii) that Member State is the former habitual residence of the child; or
 - (iii) the child is a national of that Member State;
- (b) the parties, as well as any other holder of parental responsibility have:
 - (i) agreed freely upon the jurisdiction, at the latest at the time the court is seised; or
 - (ii) expressly accepted the jurisdiction in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and
- (c) the exercise of jurisdiction is in the best interests of the child.

2. A choice of court agreement pursuant to point (b) of paragraph 1 shall be in writing, dated and signed by the parties concerned or included in the court record in accordance with national law and procedure. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

Persons who become parties to the proceedings after the court was seised may express their agreement after the court was seised. In the absence of their opposition, their agreement shall be regarded as implicit.

3. Unless otherwise agreed by the parties, the jurisdiction conferred in paragraph 1 shall cease as soon as:

- (a) the decision given in those proceedings is no longer subject to ordinary appeal; or
- (b) the proceedings have come to an end for another reason.

4. The jurisdiction conferred in point (b)(ii) of paragraph 1 shall be exclusive.

Article 11. Jurisdiction based on presence of the child

1. Where the habitual residence of a child cannot be established and jurisdiction cannot be determined on the basis of Article 10, the courts of the Member State where the child is present shall have jurisdiction.

2. The jurisdiction under paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their Member State of habitual residence.

Article 12. Transfer of jurisdiction to a court of another Member State

1. In exceptional circumstances, a court of a Member State having jurisdiction as to the substance of the matter may, upon application from a party or of its own motion, if it considers that a court of another Member State with which the child has a particular connection would be better placed to assess the best interests of the child in the particular case, stay the proceedings or a specific part thereof and either:

- (a) set a time limit for one or more of the parties to inform the court of that other Member State of the pending proceedings and the possibility to transfer jurisdiction and to introduce an application before that court; or
- (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 2.

2. The court of the other Member State may, where due to the specific circumstances of the case this is in the best interests of the child, accept jurisdiction within six weeks after:

- (a) its seizure in accordance with point (a) of paragraph 1; or
- (b) receipt of the request in accordance with point (b) of paragraph 1.

The court second seised or requested to accept jurisdiction shall inform the court first seised without delay. If it accepts, the court first seised shall decline jurisdiction.

3. The court first seised shall continue to exercise its jurisdiction if it has not received the acceptance of jurisdiction by the court of the other Member State within seven weeks after:

(a) the time limit set for the parties to introduce an application before a court of another Member State in accordance with point (a) of paragraph 1 has expired; or

(b) that court has received the request in accordance with point (b) of paragraph 1.

4. For the purposes of paragraph 1, the child shall be considered to have a particular connection with a Member State if that Member State:

(a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised;

(b) is the former habitual residence of the child;

(c) is the State of the nationality of the child;

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of that property.

5. Where exclusive jurisdiction of the court was established under Article 10 that court cannot transfer the jurisdiction to the court of another Member State.

Article 13. Request for transfer of jurisdiction by a court of a Member State not having jurisdiction

1. In exceptional circumstances and without prejudice to Article 9, if a court of a Member State which does not have jurisdiction under this Regulation, but with which the child has a particular connection in accordance with Article 12(4), considers that it is better placed to assess the best interests of the child in the particular case, it may request a transfer of jurisdiction from the court of the Member State of the habitual residence of the child.

2. Within six weeks following receipt of the request pursuant to paragraph 1, the requested court may accept to transfer its jurisdiction, if it considers that due to the specific circumstances of the case such a transfer is in the best interests of the child. Where the requested court accepts to transfer jurisdiction, it shall inform the requesting court without delay. In the absence of such acceptance within the timeframe, the requesting court shall not have jurisdiction.

Article 14. Residual jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 7 to 11, jurisdiction shall be determined, in each Member State, by the laws of that Member State.

Article 15. Provisional, including protective, measures in urgent cases

1. In urgent cases, even if the court of another Member State has jurisdiction as to the substance of the matter, the courts of a Member State shall have jurisdiction to take provisional, including protective, measures which may be available under the law of that Member State in respect of:

(a) a child who is present in that Member State; or

(b) property belonging to a child which is located in that Member State.

2. In so far as the protection of the best interests of the child so requires, the court having taken the measures referred to in paragraph 1 of this Article shall, without delay, inform the court or competent authority of the Member State having jurisdiction pursuant to Article 7 or, where appropriate, any court of a Member State exercising jurisdiction under this Regulation as to the substance of the matter, either directly in accordance with Article 86 or through the Central Authorities designated pursuant to Article 76.

3. The measures taken pursuant to paragraph 1 shall cease to apply as soon as

the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

Where appropriate, that court may inform the court having taken provisional, including protective, measures, either directly in accordance with Article 86 or through the Central Authorities designated pursuant to Article 76, of its decision.

Article 16. Incidental questions

1. If the outcome of proceedings in a matter not falling within the scope of this Regulation before a court of a Member State depends on the determination of an incidental question relating to parental responsibility, a court in that Member State may determine that question for the purposes of those proceedings even if that Member State does not have jurisdiction under this Regulation.

2. The determination of an incidental question pursuant to paragraph 1 shall produce effects only in the proceedings for which that determination was made.

3. If the validity of a legal act undertaken or to be undertaken on behalf of a child in succession proceedings before a court of a Member State requires permission or approval by a court, a court in that Member State may decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation.

4. Article 15(2) shall apply accordingly.

Section 3 Common provisions

Article 17. Seising of a court

A court shall be deemed to be 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 he or she was required to take to have service effected on the respondent;

(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 he or she was required to take to have the document lodged with the court; or

(c) if the proceedings are instituted of the court's own motion, at the time when the decision to institute the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

Article 18. Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction as to the substance of the matter under this Regulation and over which a court of another Member State has jurisdiction as to the substance of the matter under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 19. Examination as to admissibility

1. Where a respondent habitually resident in a State other than the Member State where the proceedings were instituted does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1393/2007 shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 20. Lis pendens and dependent actions

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are instituted before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Except where the jurisdiction of one of the courts is based solely on Article 15, where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are instituted before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of the court first seised.

In that case, the party who instituted proceedings before the court second seised may bring those proceedings before the court first seised.

4. Where a court of a Member State on which an acceptance of jurisdiction as referred to in Article 10 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement or acceptance declares that it has no jurisdiction under the agreement or acceptance.

5. Where and to the extent that the court has established exclusive jurisdiction in accordance with an acceptance of jurisdiction as referred to in Article 10, any court of another Member State shall decline jurisdiction in favour of that court.

Article 21. Right of the child to express his or her views

1. When exercising their jurisdiction under Section 2 of this Chapter, the courts of the Member States shall, in accordance with national law and procedure, provide the child who is capable of forming his or her own views with a genuine and effective opportunity to express his or her views, either directly, or through a representative or an appropriate body.

2. Where the court, in accordance with national law and procedure, gives a child an opportunity to express his or her views in accordance with this Article, the court shall give due weight to the views of the child in accordance with his or her age and maturity.

CHAPTER III INTERNATIONAL CHILD ABDUCTION

Article 22. Return of the child under the 1980 Hague Convention

Where a person, institution or other body alleging a breach of rights of custody applies, either directly or with the assistance of a Central Authority, to the court in a Member State for a decision on the basis of the 1980 Hague Convention ordering the return of a child under 16 years that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, Articles 23 to 29, and Chapter VI, of this Regulation shall apply and complement the 1980 Hague Convention.

Article 23. Receipt and processing of applications by Central Authorities

1. The requested Central Authority shall act expeditiously in processing an application, based on the 1980 Hague Convention, as referred to in Article 22.

2. Where the Central Authority of the requested Member State receives an application referred to in Article 22, it shall, within five working days from the date of receipt of the application, acknowledge receipt. It shall, without undue delay, inform the Central Authority of the requesting Member State or the applicant, as appropriate, what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information.

Article 24. Expeditious court proceedings

1. A court to which an application for the return of a child referred to in

Article 22 is made shall act expeditiously in proceedings on the application, using the most expeditious procedures available under national law.

2. Without prejudice to paragraph 1 a court of first instance shall, except where exceptional circumstances make this impossible, give its decision no later than six weeks after it is seised.

3. Except where exceptional circumstances make this impossible, a court of higher instance shall give its decision no later than six weeks after all the required procedural steps have been taken and the court is in a position to examine the appeal, whether by hearing or otherwise.

Article 25. Alternative dispute resolution

As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.

Article 26. Right of the child to express his or her views in return proceedings

Article 21 of this Regulation shall also apply in return proceedings under the 1980 Hague Convention.

Article 27. Procedure for the return of a child

1. A court cannot refuse to return a child unless the person seeking the return of the child has been given an opportunity to be heard.

2. The court may, at any stage of the proceedings, in accordance with Article 15, examine whether contact between the child and the person seeking the return of the child should be ensured, taking into account the best interests of the child.

3. Where a court considers refusing to return a child solely on the basis of point (b) of Article 13(1) of the 1980 Hague Convention, it shall not refuse to return the child if the party seeking the return of the child satisfies the court by providing sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after his or her return.

4. For the purposes of paragraph 3 of this Article, the court may communicate with the competent authorities of the Member State where the child was habitually resident immediately before the wrongful removal or retention, either directly in accordance with Article 86 or with the assistance of Central Authorities.

5. Where the court orders the return of the child, the court may, where appropriate, take provisional, including protective, measures in accordance with Article 15 of this Regulation in order to protect the child from the grave risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention, provided that the examining and taking of such measures would not unduly delay the return proceedings.

6. A decision ordering the return of the child may be declared provisionally enforceable, notwithstanding any appeal, where the return of the child before the decision on the appeal is required by the best interests of the child.

Article 28. Enforcement of decisions ordering the return of a child

1. An authority competent for enforcement to which an application for the enforcement of a decision ordering the return of a child to another Member State is made shall act expeditiously in processing the application.

2. Where a decision as referred to in paragraph 1 has not been enforced within six weeks of the date when the enforcement proceedings were initiated, the party seeking enforcement or the Central Authority of the Member State of enforcement shall have the right to request a statement of the reasons for the delay from the authority competent for enforcement.

Article 29. Procedure following a refusal to return the child under point (b) of Article 13(1) and Article 13(2) of the 1980 Hague Convention

1. This Article shall apply where a decision refusing the return of a child to

another Member State is based solely on point (b) of Article 13(1), or on Article 13 (2), of the 1980 Hague Convention.

2. The court giving a decision as referred to in paragraph 1 shall, of its own motion, issue a certificate using the form set out in Annex I. The certificate shall be completed and issued in the language of the decision. The certificate may also be issued in another official language of the institutions of the European Union requested by a party. This does not create any obligation for the court issuing the certificate to provide a translation or transliteration of the translatable content of the free text fields.

3. If, at the time the court gives a decision as referred to in paragraph 1, a court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has already been seised of proceedings to examine the substance of rights of custody, the court, if it is aware of these proceedings, shall, within one month of the date of the decision referred to in paragraph 1, transmit to the court of that Member State, either directly or through the Central Authorities the following documents:

- (a) a copy of its decision as referred to in paragraph 1;
- (b) the certificate issued pursuant to paragraph 2; and
- (c) where applicable, a transcript, summary or minutes of the hearings before the court and any other documents it considers relevant.

4. The court in the Member State where the child was habitually resident immediately before the wrongful removal or retention may, where necessary, require a party to provide a translation or transliteration, in accordance with Article 91, of the decision as referred to in paragraph 1 and any other document attached to the certificate in accordance with point (c) of paragraph 3 of this Article.

5. If, in cases other than those referred to in paragraph 3, within three months of the notification of a decision as referred to in paragraph 1, one of the parties seises a court in the Member State where the child was habitually resident immediately before the wrongful removal or retention in order for the court to examine the substance of rights of custody, the following documents shall be submitted to the court by that party:

- (a) a copy of the decision as referred to in paragraph 1;
- (b) the certificate issued pursuant to paragraph 2; and
- (c) where applicable, a transcript, summary or minutes of the hearings before the court which refused the return of the child.

6. Notwithstanding a decision on non-return as referred to in paragraph 1, any decision on the substance of rights of custody resulting from proceedings referred to in paragraphs 3 and 5 which entails the return of the child shall be enforceable in another Member State in accordance with Chapter IV.

CHAPTER IV RECOGNITION AND ENFORCEMENT

Section 1 General provisions on recognition and enforcement

Subsection 1 Recognition

Article 30. Recognition of a decision

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the

basis of a decision relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3. Any interested party may, in accordance with the procedures provided for in Articles 59 to 62 and, where appropriate, Section 5 of this Chapter and Chapter VI, apply for a decision that there are no grounds for refusal of recognition referred to in Articles 38 and 39.

4. The local jurisdiction of the court communicated by each Member State to the Commission pursuant to Article 103 shall be determined by the law of the Member State in which proceedings in accordance with paragraph 3 of this Article are brought.

5. Where the recognition of a decision is raised as an incidental question before a court of a Member State, that court may determine that issue.

Article 31. Documents to be produced for recognition

1. A party who wishes to invoke in a Member State a decision given in another Member State shall produce the following:

(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity; and

(b) the appropriate certificate issued pursuant to Article 36.

2. The court or competent authority before which a decision given in another Member State is invoked may, where necessary, require the party invoking it to provide a translation or transliteration, in accordance with Article 91, of the translatable content of the free text fields of the certificate referred to in point (b) of paragraph 1 of this Article.

3. The court or competent authority before which a decision given in another Member State is invoked may require the party to provide a translation or transliteration, in accordance with Article 91, of the decision in addition to a translation or transliteration of the translatable content of the free text fields of the certificate if it is unable to proceed without such a translation or transliteration.

Article 32. Absence of documents

1. If the documents specified in Article 31(1) are not produced, the court or competent authority may specify a time for its production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with its production.

2. If the court or competent authority so requires, a translation or transliteration, in accordance with Article 91, of such equivalent documents shall be produced.

Article 33. Stay of proceedings

The court before which a decision given in another Member State is invoked may stay its proceedings, in whole or in part, where:

(a) an ordinary appeal against that decision has been lodged in the Member State of origin; or

(b) an application has been submitted for a decision that there are no grounds for refusal of recognition referred to in Articles 38 and 39 or for a decision that the recognition is to be refused on the basis of one of those grounds.

Subsection 2 Enforceability and enforcement

Article 34. Enforceable decisions

1. A decision in matters of parental responsibility given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

2. For the purposes of enforcement in another Member State of a decision granting rights of access, the court of origin may declare the decision provisionally enforceable notwithstanding any appeal.

Article 35. Documents to be produced for enforcement

1. For the purposes of enforcement in a Member State of a decision given in another Member State, the party seeking enforcement shall provide the authority competent for enforcement with:

- (a) a copy of the decision, which satisfies the conditions necessary to establish its authenticity; and
- (b) the appropriate certificate issued pursuant to Article 36.

2. For the purposes of enforcement in a Member State of a decision given in another Member State ordering a provisional, including a protective, measure, the party seeking enforcement shall provide the authority competent for enforcement with:

- (a) a copy of the decision, which satisfies the conditions necessary to establish its authenticity;
- (b) the appropriate certificate issued pursuant to Article 36, certifying that the decision is enforceable in the Member State of origin and that the court of origin:
 - (i) has jurisdiction as to the substance of the matter; or
 - (ii) has ordered the measure in accordance with Article 27(5) in conjunction with Article 15; and
- (c) where the measure was ordered without the respondent being summoned to appear, proof of service of the decision.

3. The authority competent for enforcement may, where necessary, require the party seeking enforcement to provide a translation or transliteration, in accordance with Article 91, of the translatable content of the free text fields of the certificate which specifies the obligation to be enforced.

4. The authority competent for enforcement may require the party seeking enforcement to provide a translation or transliteration, in accordance with Article 91, of the decision if it is unable to proceed without such a translation or transliteration.

*Subsection 3
Certificate*

Article 36. Issuance of the certificate

1. The court of a Member State of origin as communicated to the Commission pursuant to Article 103 shall, upon application by a party, issue a certificate for:

- (a) a decision in matrimonial matters using the form set out in Annex II;
- (b) a decision in matters of parental responsibility using the form set out in Annex III;
- (c) a decision ordering the return of a child as referred to in point (a) of Article 2(1), and, where applicable, any provisional, including protective, measures ordered in accordance with Article 27(5) accompanying the decision using the form set out in Annex IV.

2. The certificate shall be completed and issued in the language of the decision. The certificate may also be issued in another official language of the institutions of the European Union requested by the party. This does not create any obligation for the court issuing the certificate to provide a translation or transliteration of the translatable content of the free text fields.

3. No challenge shall lie against the issuance of the certificate.

Article 37. Rectification of the certificate

1. The court of a Member State of origin as communicated to the Commission

pursuant to Article 103 shall, upon application, and may, of its own motion, rectify the certificate where, due to a material error or omission, there is a discrepancy between the decision to be enforced and the certificate.

2. The law of the Member State of origin shall apply to the procedure for rectification of the certificate.

Subsection 4
Refusal of recognition and enforcement

Article 38. Grounds for refusal of recognition of decisions in matrimonial matters

The recognition of a decision relating to a divorce, legal separation or marriage annulment shall be refused:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked;
- (b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the decision unequivocally;
- (c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is invoked; or
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a non-Member State between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked.

Article 39. Grounds for refusal of recognition of decisions in matters of parental responsibility

1. The recognition of a decision in matters of parental responsibility shall be refused:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked, taking into account the best interests of the child;
- (b) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the decision unequivocally;
- (c) upon application by any person claiming that the decision infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;
- (d) if and to the extent that it is irreconcilable with a later decision relating to parental responsibility given in the Member State in which recognition is invoked;
- (e) if and to the extent that it is irreconcilable with a later decision relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later decision fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked; or
- (f) if the procedure laid down in Article 82 has not been complied with.

2. The recognition of a decision in matters of parental responsibility may be refused if it was given without the child who is capable of forming his or her own views having been given an opportunity to express his or her views in accordance with Article 21, except where:

- (a) the proceedings only concerned the property of the child and provided

that giving such an opportunity was not required in light of the subject matter of the proceedings; or

(b) there were serious grounds taking into account, in particular, the urgency of the case.

Article 40. Procedure for refusal of recognition

1. The procedures provided for in Articles 59 to 62 and, where appropriate, Section 5 of this Chapter and Chapter VI shall apply accordingly to an application for refusal of recognition.

2. The local jurisdiction of the court communicated by each Member State to the Commission pursuant to Article 103 shall be determined by the law of the Member State in which proceedings for non-recognition are brought.

Article 41. Grounds for refusal of enforcement of decisions in matters of parental responsibility

Without prejudice to Article 56(6), the enforcement of a decision in matters of parental responsibility shall be refused if one of the grounds for refusal of recognition referred to in Article 39 is found to exist.

Section 2

Recognition and enforcement of certain privileged decisions

Article 42. Scope

1. This Section applies to the following types of decision provided that they have been certified in the Member State of origin in accordance with Article 47:

(a) decisions in so far as they grant rights of access; and

(b) decisions pursuant to Article 29(6) in so far as they entail the return of the child.

2. This Section shall not prevent a party from seeking recognition and enforcement of a decision referred to in paragraph 1 in accordance with the provisions on recognition and enforcement laid down in Section 1 of this Chapter.

Subsection 1

Recognition

Article 43. Recognition

1. A decision referred to in Article 42(1) given in a Member State shall be recognised in the other Member States without any special procedure being required and without any possibility of opposing its recognition unless and to the extent that the decision is found to be irreconcilable with a later decision as referred to in Article 50.

2. A party who wishes to invoke in a Member State a decision referred to in Article 42(1) given in another Member State shall produce the following:

(a) a copy of the decision, which satisfies the conditions necessary to establish its authenticity; and

(b) the appropriate certificate issued pursuant to Article 47.

3. Article 31(2) and (3) shall apply accordingly.

Article 44. Stay of proceedings

The court before which a decision referred to in Article 42(1) given in another Member State is invoked may stay its proceedings, in whole or in part, where:

(a) an application has been submitted alleging the irreconcilability of that decision with a later decision as referred to in Article 50; or

(b) the person against whom enforcement is sought has applied, in accordance with Article 48, for the withdrawal of a certificate issued pursuant to Article 47.

Subsection 2
Enforceability and enforcement

Article 45. Enforceable decisions

1. A decision referred to in Article 42(1) given in a Member State which is enforceable in that Member State shall be enforceable under this Section in the other Member States without any declaration of enforceability being required.

2. For the purposes of enforcement in another Member State of a decision referred to in point (a) of Article 42(1), the courts of the Member State of origin may declare the decision provisionally enforceable notwithstanding any appeal.

Article 46. Documents to be produced for enforcement

1. For the purposes of enforcement in a Member State of a decision referred to in Article 42(1) which was given in another Member State, the party seeking enforcement shall provide the authority competent for enforcement with:

(a) a copy of the decision, which satisfies the conditions necessary to establish its authenticity; and

(b) the appropriate certificate issued pursuant to Article 47.

2. For the purposes of enforcement in a Member State of a decision referred to in point (a) of Article 42(1) which was given in another Member State, the authority competent for enforcement may, where necessary, require the applicant to provide a translation or transliteration, in accordance with Article 91, of the translatable content of the free text fields of the certificate which specifies the obligation to be enforced.

3. For the purposes of enforcement in a Member State of a decision referred to in Article 42(1) which was given in another Member State, the authority competent for enforcement may require the applicant to provide a translation or transliteration, in accordance with Article 91, of the decision if it is unable to proceed without such a translation or transliteration.

Subsection 3
Certificate for privileged decisions

Article 47. Issuance of the certificate

1. The court that has given a decision as referred to in Article 42(1) shall, upon application by a party, issue a certificate for:

(a) a decision granting rights of access, using the form set out in Annex V;

(b) a decision on the substance of rights of custody entailing the return of a child and given pursuant to Article 29(6), using the form set out in Annex VI.

2. The certificate shall be completed and issued in the language of the decision. The certificate may also be issued in another official language of the institutions of the European Union requested by a party. This does not create any obligation for the court issuing the certificate to provide a translation or transliteration of the translatable content of the free text fields.

3. The court shall issue the certificate only if the following conditions are met:

(a) all parties concerned were given an opportunity to be heard;

(b) the child was given an opportunity to express his or her views in accordance with Article 21;

(c) where the decision was given in default of appearance either:

(i) the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence; or

(ii) it is established that the person defaulting accepted the decision unequivocally.

4. Without prejudice to paragraph 3 of this Article, the certificate for a decision

referred to in point (b) of Article 42(1) shall only be issued if, in giving its decision, the court has taken into account the reasons for and the facts underlying the prior decision given in another Member State pursuant to point (b) of Article 13(1), or Article 13(2), of the 1980 Hague Convention.

5. The certificate shall take effect only within the limits of the enforceability of the decision.

6. No challenges other than those referred to in Article 48 shall lie against the issuance of the certificate.

Article 48. Rectification and withdrawal of the certificate

1. The court of the Member State of origin as communicated to the Commission pursuant to Article 103 shall, upon application, and may, of its own motion, rectify the certificate where, due to a material error or omission, there is a discrepancy between the decision and the certificate.

2. The court referred to in paragraph 1 of this Article shall, upon application or of its own motion, withdraw the certificate where it was wrongly granted, having regard to the requirements laid down in Article 47. Article 49 shall apply accordingly.

3. The procedure, including any appeal, with regard to the rectification or withdrawal of the certificate shall be governed by the law of the Member State of origin.

Article 49. Certificate on lack or limitation of enforceability

1. Where and to the extent that a decision certified in accordance with Article 47 has ceased to be enforceable or its enforceability has been suspended or limited, a certificate indicating the lack or limitation of enforceability shall, upon application at any time to the court of the Member State of origin as communicated to the Commission pursuant to Article 103, be issued, using the standard form set out in Annex VII.

2. The certificate shall be completed and issued in the language of the decision. The certificate may also be issued in another official language of the institutions of the European Union requested by a party. This does not create any obligation for the court issuing the certificate to provide a translation or transliteration of the translatable content of the free text fields.

Subsection 4

Refusal of recognition and enforcement

Article 50. Irreconcilable decisions

The recognition and enforcement of a decision referred to in Article 42(1) shall be refused if and to the extent that it is irreconcilable with a later decision relating to parental responsibility concerning the same child which was given:

(a) in the Member State in which recognition is invoked; or

(b) in another Member State or in the non-Member State of the habitual residence of the child provided that the later decision fulfils the conditions necessary for its recognition in the Member State in which the recognition is invoked.

Section 3

Common provisions on enforcement

Subsection 1

Enforcement

Article 51. Enforcement procedure

1. Subject to the provisions of this Section, the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the

Member State of enforcement. Without prejudice to Articles 41, 50, 56 and 57, a decision given in a Member State which is enforceable in the Member State of origin shall be enforced in the Member State of enforcement under the same conditions as a decision given in that Member State.

2. The party seeking the enforcement of a decision given in another Member State shall not be required to have a postal address in the Member State of enforcement. That party shall be required to have an authorised representative in the Member State of enforcement only if such a representative is mandatory under the law of the Member State of enforcement irrespective of the nationality of the parties.

Article 52. Authorities competent for enforcement

The application for enforcement shall be submitted to the authority competent for enforcement under the law of the Member State of enforcement as communicated by that Member State to the Commission pursuant to Article 103.

Article 53. Partial enforcement

1. A party seeking the enforcement of a decision may apply for partial enforcement of the decision.

2. Where a decision has been given in respect of several matters and enforcement has been refused for one or more of them, enforcement shall nonetheless be possible for the parts of the decision not affected by the refusal.

3. Paragraphs 1 and 2 of this Article shall not be used to enforce a decision ordering the return of a child without also enforcing any provisional, including protective, measures, which have been ordered to protect the child from the risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention.

Article 54. Arrangements for the exercise of rights of access

1. The authorities competent for enforcement or courts of the Member State of enforcement may make arrangements for organising the exercise of rights of access, if the necessary arrangements have not at all or have not sufficiently been made in the decision given by the courts of the Member State having jurisdiction as to the substance of the matter and provided the essential elements of this decision are respected.

2. The arrangements made pursuant to paragraph 1 shall cease to apply following a later decision by the courts of the Member State having jurisdiction as to the substance of the matter.

Article 55. Service of certificate and decision

1. Where enforcement is sought of a decision given in another Member State, the appropriate certificate issued pursuant to Articles 36 or 47 shall be served on the person against whom enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the decision, if not already served on that person, and, where applicable, by the details of the arrangement referred to in Article 54(1).

2. Where service has to be effected in a Member State other than the Member State of origin, the person against whom enforcement is sought may request a translation or transliteration of the following:

(a) the decision, in order to contest the enforcement;

(b) where applicable, the translatable content of the free text fields of the certificate issued pursuant to Article 47,

if not written in or accompanied by a translation or transliteration into either a language which he or she understands, or the official language of the Member State in which he or she is habitually resident or, where there are several official languages in that Member State, the official language or one of the official languages of the place where he or she is habitually resident.

3. Where a translation or transliteration is requested under paragraph 2, no measures of enforcement may be taken other than protective measures until that

translation or transliteration has been provided to the person against whom enforcement is sought.

4. Paragraphs 2 and 3 shall not apply to the extent that the decision and, where applicable, the certificate referred to in paragraph 1 have already been served on the person against whom enforcement is sought in compliance with the translation or transliteration requirements in paragraph 2.

Subsection 2

Suspension of enforcement proceedings and refusal of enforcement

Article 56. Suspension and refusal

1. The authority competent for enforcement or the court in the Member State of enforcement shall of its own motion or upon application of the person against whom enforcement is sought or, where applicable under national law, of the child concerned suspend the enforcement proceedings where the enforceability of the decision is suspended in the Member State of origin.

2. The authority competent for enforcement or the court in the Member State of enforcement may, upon the application of the person against whom enforcement is sought or, where applicable under national law, of the child concerned, suspend, in whole or in part, the enforcement proceedings for one of the following reasons:

(a) an ordinary appeal against the decision has been lodged in the Member State of origin;

(b) the time for an ordinary appeal referred to in point (a) has not yet expired;

(c) an application for refusal of enforcement based on Article 41, 50 or 57 has been submitted;

(d) the person against whom enforcement is sought has applied in accordance with Article 48 for the withdrawal of a certificate issued pursuant to Article 47.

3. Where the authority competent for enforcement or the court suspends the enforcement proceedings for the reason referred to in point (b) of paragraph 2, it may specify the time within which any appeal is to be lodged.

4. In exceptional cases, the authority competent for enforcement or the court may, upon application of the person against whom enforcement is sought or, where applicable under national law, of the child concerned or of any interested party acting in the best interests of the child, suspend the enforcement proceedings if enforcement would expose the child to a grave risk of physical or psychological harm due to temporary impediments which have arisen after the decision was given, or by virtue of any other significant change of circumstances.

Enforcement shall be resumed as soon as the grave risk of physical or psychological harm ceases to exist.

5. In the cases referred to in paragraph 4, before refusing enforcement under paragraph 6, the authority competent for enforcement or the court shall take appropriate steps to facilitate enforcement in accordance with national law and procedure and the best interests of the child.

6. Where the grave risk referred to in paragraph 4 is of a lasting nature, the authority competent for enforcement or the court, upon application, may refuse the enforcement of the decision.

Article 57. Grounds for suspension or refusal of enforcement under national law

The grounds for suspension or refusal of enforcement under the law of the Member State of enforcement shall apply in so far as they are not incompatible with the application of Articles 41, 50 and 56.

Article 58. Jurisdiction of authorities or courts competent for refusal of enforcement

1. The application for refusal of enforcement based on Article 39 shall be submitted to the court communicated by each Member State to the Commission pursuant to Article 103. The application for refusal of enforcement based on other grounds set out in or permitted by this Regulation shall be submitted to the authority or the court communicated by each Member State to the Commission pursuant to Article 103.

2. The local jurisdiction of the authority or court communicated by each Member State to the Commission pursuant to Article 103 shall be determined by the law of the Member State in which proceedings in accordance with paragraph 1 of this Article are brought.

Article 59. Application for refusal of enforcement

1. The procedure for making an application for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State of enforcement.

2. The applicant shall provide the authority competent for enforcement or the court with a copy of the decision and, where applicable and possible, the appropriate certificate issued pursuant to Article 36 or 47.

3. The authority competent for enforcement or the court may, where necessary, require the applicant to provide a translation or transliteration, in accordance with Article 91, of the translatable content of the free text fields of the appropriate certificate issued pursuant to Article 36 or 47 which specifies the obligation to be enforced.

4. If the authority competent for enforcement or the court is unable to proceed without a translation or transliteration of the decision, it may require the applicant to provide such a translation or transliteration in accordance with Article 91.

5. The authority competent for enforcement or the court may dispense with the production of the documents referred to in paragraph 2 if:

- (a) it already possesses them; or
- (b) it considers it unreasonable to require the applicant to provide them.

In the case referred to in point (b) of the first subparagraph, the authority competent for enforcement or the court may require the other party to provide those documents.

6. The party seeking the refusal of enforcement of a decision given in another Member State shall not be required to have a postal address in the Member State of enforcement. That party shall be required to have an authorised representative in the Member State of enforcement only if such a representative is mandatory under the law of the Member State of enforcement irrespective of the nationality of the parties.

Article 60. Expeditious procedures

The authority competent for enforcement or the court shall act without undue delay in procedures concerning the application for refusal of enforcement.

Article 61. Challenge or appeal

1. Either party may challenge or appeal against a decision on the application for refusal of enforcement.

2. The challenge or appeal shall be lodged with the authority or court communicated by the Member State of enforcement to the Commission pursuant to Article 103 as the authority or court with which such a challenge or appeal is to be lodged.

Article 62. Further challenge or appeal

A decision given on the challenge or appeal may only be contested by a challenge or appeal where the courts with which any further challenge or appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to Article 103.

Article 63. Stay of proceedings

1. The authority competent for enforcement or the court to which an application for refusal of enforcement is submitted or which hears an appeal lodged under Article 61 or 62 may stay the proceedings for one of the following reasons:

- (a) an ordinary appeal against the decision has been lodged in the Member State of origin;
- (b) the time for an ordinary appeal referred to in point (a) has not yet expired; or
- (c) the person against whom enforcement is sought has applied for the withdrawal in accordance with Article 48 of a certificate issued pursuant to Article 47.

2. Where the authority competent for enforcement or court stays the proceedings for the reason referred to in point (b) of paragraph 1, it may specify the time within which an appeal is to be lodged.

Section 4**Authentic instruments and agreements****Article 64. Scope**

This Section applies in matters of divorce, legal separation and parental responsibility to authentic instruments which have been formally drawn up or registered, and to agreements which have been registered, in a Member State assuming jurisdiction under Chapter II.

Article 65. Recognition and enforcement of authentic instruments and agreements

1. Authentic instruments and agreements on legal separation and divorce which have binding legal effect in the Member State of origin shall be recognised in other Member States without any special procedure being required. Section 1 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.

2. Authentic instruments and agreements in matters of parental responsibility which have binding legal effect and are enforceable in the Member State of origin shall be recognised and enforced in other Member States without any declaration of enforceability being required. Sections 1 and 3 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.

Article 66. Certificate

1. The court or competent authority of the Member State of origin as communicated to the Commission pursuant to Article 103 shall, upon application by a party, issue a certificate for an authentic instrument or agreement:

- (a) in matrimonial matters using the form set out in Annex VIII;
- (b) in matters of parental responsibility using the form set out in Annex IX.

The certificate referred to in point (b) shall contain a summary of the enforceable obligation contained in the authentic instrument or agreement.

2. The certificate may be issued only if the following conditions are met:

- (a) the Member State which empowered the public authority or other authority to formally draw up or register the authentic instrument or register the agreement had jurisdiction under Chapter II; and
- (b) the authentic instrument or agreement has binding legal effect in that Member State.

3. Notwithstanding paragraph 2, in matters of parental responsibility the certificate may not be issued if there are indications that the content of the authentic instrument or agreement is contrary to the best interests of the child.

4. The certificate shall be completed in the language of the authentic instrument or agreement. It may also be issued in another official language of the institutions of the European Union requested by the party. This does not create any obligation for the court or competent authority issuing the certificate to provide a translation or transliteration of the translatable content of the free text fields.

5. If the certificate is not produced, the authentic instrument or agreement shall not be recognised or enforced in another Member State.

Article 67. Rectification and withdrawal of the certificate

1. The court or competent authority of the Member State of origin as communicated to the Commission pursuant to Article 103 shall, upon application, and may, of its own motion, rectify the certificate where, due to a material error or omission, there is a discrepancy between the authentic instrument or agreement and the certificate.

2. The court or competent authority referred to in paragraph 1 of this Article shall, upon application or of its own motion, withdraw the certificate where it was wrongly granted, having regard to the requirements laid down in Article 66.

3. The procedure, including any appeal, with regard to the rectification or withdrawal of the certificate shall be governed by the law of the Member State of origin.

Article 68. Grounds for refusal of recognition or enforcement

1. The recognition of an authentic instrument or agreement on legal separation or divorce shall be refused if:

(a) such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked;

(b) it is irreconcilable with a decision, an authentic instrument or agreement between the same parties in the Member State in which recognition is invoked; or

(c) it is irreconcilable with an earlier decision, authentic instrument or agreement given in another Member State or in a non-Member State between the same parties, provided that the earlier decision, authentic instrument or agreement fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked.

2. The recognition or enforcement of an authentic instrument or agreement in matters of parental responsibility shall be refused:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked, taking into account the best interests of the child;

(b) upon application by any person claiming that the authentic instrument or agreement infringes his or her parental responsibility, if the authentic instrument was drawn up or registered, or the agreement was concluded and registered, without that person having been involved;

(c) if and to the extent that it is irreconcilable with a later decision, authentic instrument or agreement in matters of parental responsibility given in the Member State in which recognition is invoked or enforcement is sought;

(d) if and to the extent that it is irreconcilable with a later decision, authentic instrument or agreement in matters of parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later decision, authentic instrument or agreement fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked or enforcement is sought.

3. The recognition or enforcement of an authentic instrument or agreement in matters of parental responsibility may be refused if the authentic instrument was formally drawn up or registered, or the agreement was registered, without the child who is capable of forming his or her own views having been given an opportunity to express his or her views.

Section 5 Other provisions

Article 69. Prohibition of review of jurisdiction of the court of origin

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point (a) of Article 38 and point (a) of

Article 39 may not be applied to the rules relating to jurisdiction set out in Articles 3 to 14.

Article 70. Differences in applicable law

The recognition of a decision in matrimonial matters may not be refused because the law of the Member State in which such recognition is invoked would not allow divorce, legal separation or marriage annulment on the same facts.

Article 71. Non-review as to substance

Under no circumstances may a decision given in another Member State be reviewed as to its substance.

Article 72. Appeal in certain Member States

Where a decision was given in Ireland, Cyprus or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of this Chapter.

Article 73. Costs

This Chapter shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation and to the enforcement of any order concerning such costs and expenses.

Article 74. Legal aid

1. An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Articles 30(3), 40, and 59, to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.

2. An applicant who, in the Member State of origin, has benefited from free proceedings before an administrative authority communicated to the Commission pursuant to Article 103 shall be entitled, in any procedures provided for in Articles 30(3), 40 and 59, to benefit from legal aid in accordance with paragraph 1 of this Article. To that end, that party shall present a statement from the competent authority in the Member State of origin to the effect that he or she fulfils the financial requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Article 75. Security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for the enforcement of a decision given in another Member State on the ground that he or she is a foreign national or that he or she is not habitually resident in the Member State of enforcement.

CHAPTER V
COOPERATION IN MATTERS OF PARENTAL RESPONSIBILITY

Article 76. Designation of Central Authorities

Each Member State shall designate one or more Central Authorities to assist with the application of this Regulation in matters of parental responsibility and shall specify the geographical or functional jurisdiction of each. Where a Member State has designated more than one Central Authority, communications shall normally be sent directly to the relevant Central Authority with jurisdiction. Where a communication is sent to a Central Authority without jurisdiction, the latter shall forward it to the Central Authority with jurisdiction and inform the sender accordingly.

Article 77. General tasks of Central Authorities

1. Central Authorities shall communicate information on national laws, procedures and services available in matters of parental responsibility and take the

measures that they consider appropriate for improving the application of this Regulation.

2. Central Authorities shall cooperate and promote cooperation among the competent authorities in their Member States to achieve the purposes of this Regulation.

3. For the purposes of paragraph 1 and 2, the European Judicial Network in civil and commercial matters may be used.

Article 78. Requests through Central Authorities

1. Central Authorities shall, upon request from a Central Authority of another Member State, cooperate in individual cases to achieve the purposes of this Regulation.

2. Requests pursuant to this Chapter may be made by a court or a competent authority. Requests pursuant to points (c) and (g) of Article 79 and point (c) of Article 80(1) may also be made by holders of parental responsibility.

3. Except in urgent cases and without prejudice to Article 86, requests pursuant to this Chapter shall be submitted to the Central Authority of the Member State of the requesting court or competent authority or of the applicant's habitual residence.

4. This Article shall not preclude Central Authorities or competent authorities from entering into or maintaining existing agreements or arrangements with Central Authorities or competent authorities of one or more other Member States allowing direct communications in their mutual relations.

5. This Chapter shall not preclude any holder of parental responsibility from applying directly to the courts of another Member State.

6. Nothing in Articles 79 and 80 shall impose an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested Member State.

Article 79. Specific tasks of requested Central Authorities

Requested Central Authorities shall, acting directly or through courts, competent authorities or other bodies, take all appropriate steps to:

(a) provide assistance, in accordance with national law and procedure, in discovering the whereabouts of a child where it appears that the child may be present within the territory of the requested Member State and that information is necessary for carrying out an application or request under this Regulation;

(b) collect and exchange information relevant in procedures in matters of parental responsibility under Article 80;

(c) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions in the territory of the requested Central Authority, in particular concerning rights of access and the return of the child, including, where necessary, information about how to obtain legal aid;

(d) facilitate communication between courts, competent authorities and other bodies involved, in particular for the application of Article 81;

(e) facilitate communication between courts, where necessary, in particular for the application of Articles 12, 13, 15 and 20;

(f) provide such information and assistance as is needed by courts and competent authorities to apply Article 82; and

(g) facilitate agreement between holders of parental responsibility through mediation or other means of alternative dispute resolution, and facilitate cross-border cooperation to this end.

Article 80. Cooperation on collecting and exchanging information relevant in procedures in matters of parental responsibility

1. Upon a request made with supporting reasons, the Central Authority of the

Member State where the child is or was habitually resident or present, directly or through courts, competent authorities or other bodies:

- (a) shall, where available provide, or draw up and provide a report on:
 - (i) the situation of the child;
 - (ii) any ongoing procedures in matters of parental responsibility for the child; or
 - (iii) decisions taken in matters of parental responsibility for the child;
- (b) shall provide any other information relevant in procedures in matters of parental responsibility in the requesting Member State, in particular about the situation of a parent, a relative or other person who may be suitable to care for the child, if the situation of the child so requires; or
- (c) may request the court or competent authority of its Member State to consider the need to take measures for the protection of the person or property of the child.

2. In any case where the child is exposed to a serious danger, the court or competent authority contemplating or having taken measures for the protection of the child, if it is aware that the child's residence has changed to, or that the child is present in, another Member State, shall inform the courts or competent authorities of that other Member State about the danger involved and the measures taken or under consideration. This information may be transmitted directly or through the Central Authorities.

3. The requests referred to in paragraphs 1 and 2 and any additional documents shall be accompanied by a translation into the official language of the requested Member State or, where there are several official languages in that Member State, into the official language or one of the official languages of the place where the request is to be carried out, or any other language that the requested Member State expressly accepts. Member States shall communicate such acceptance to the Commission in accordance with Article 103.

4. Except where exceptional circumstances make this impossible, the information referred to in paragraph 1 shall be transmitted to the requesting Central Authority no later than three months following the receipt of the request.

Article 81. Implementation of decisions in matters of parental responsibility in another Member State

1. A court of a Member State may request the courts or competent authorities of another Member State to assist in the implementation of decisions in matters of parental responsibility given under this Regulation, in particular in securing the effective exercise of rights of access.

2. The request referred to in paragraph 1 and any accompanying documents shall be accompanied by a translation into the official language of the requested Member State or, where there are several official languages in that Member State, into the official language or one of the official languages of the place where the request is to be carried out or any other language that the requested Member State expressly accepts. Member States shall communicate such acceptance to the Commission in accordance with Article 103.

Article 82. Placement of a child in another Member State

1. Where a court or a competent authority contemplates the placement of a child in another Member State, it shall first obtain the consent of the competent authority in that other Member State. To that effect the Central Authority of the requesting Member State shall transmit to the Central Authority of the requested Member State where the child is to be placed a request for consent which includes a report on the child together with the reasons for the proposed placement or provision of care, information on any contemplated funding and any other information it considers relevant, such as the expected duration of the placement.

2. Paragraph 1 shall not apply where the child is to be placed with a parent.

Member States may decide that their consent pursuant to paragraph 1 is not

required for placements within their own territory with certain categories of close relatives in addition to parents. Those categories shall be communicated to the Commission pursuant to Article 103.

3. The Central Authority of another Member State may inform a court or competent authority which contemplates a placement of a child of a close connection of the child with that Member State. This shall not affect the national law and procedure of the Member State contemplating the placement.

4. The request and any additional documents referred to in paragraph 1 shall be accompanied by a translation into the official language of the requested Member State or, where there are several official languages in that Member State, into the official language or one of the official languages of the place where the request is to be carried out, or any other language that the requested Member State expressly accepts. Member States shall communicate such acceptance to the Commission in accordance with Article 103.

5. The placement referred to in paragraph 1 shall only be ordered or arranged by the requesting Member State after the competent authority of the requested Member State has consented to the placement.

6. Except where exceptional circumstances make this impossible, the decision granting or refusing consent shall be transmitted to the requesting Central Authority no later than three months following the receipt of the request.

7. The procedure for obtaining consent shall be governed by the national law of the requested Member State.

8. This Article shall not preclude Central Authorities or competent authorities from entering into or maintaining existing agreements or arrangements with Central Authorities or competent authorities of one or more other Member States simplifying the consultation procedure for obtaining consent in their mutual relations.

Article 83. Costs of Central Authorities

1. The assistance provided by the Central Authorities pursuant to this Regulation shall be free of charge.

2. Each Central Authority shall bear its own costs in applying this Regulation.

Article 84. Meetings of Central Authorities

1. In order to facilitate the application of this Regulation, Central Authorities shall meet regularly.

2. The meetings of Central Authorities shall be convened, in particular, by the Commission within the framework of the European Judicial Network in civil and commercial matters in compliance with Decision 2001/470/EC.

CHAPTER VI GENERAL PROVISIONS

Article 85. Scope

This Chapter shall apply to the processing of requests and applications under Chapters III to V.

Article 86. Cooperation and communication between courts

1. For the purposes of this Regulation, the courts may cooperate and communicate directly with, or request information directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

2. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

- (a) communication for the purposes of Articles 12 and 13;
- (b) information in accordance with Article 15;
- (c) information on pending proceedings for the purposes of Article 20;
- (d) communication for the purposes of Chapters III to V.

Article 87. Collection and transmission of information

1. The requested Central Authority shall transmit any application, request or the information contained therein in matters of parental responsibility or international child abduction, as appropriate, pursuant to this Regulation to the court, competent authority within its Member State or any intermediary as appropriate under national law and procedure.

2. Any intermediary, court or competent authority to which the information referred to in paragraph 1 has been transmitted under this Regulation may only use it for the purposes of this Regulation.

3. The intermediary, court or competent authority which holds or is competent to collect, within the requested State, information required to carry out a request or an application pursuant to this Regulation, shall provide that information to the requested Central Authority at its request in cases where the requested Central Authority does not have direct access to the information.

4. The requested Central Authority shall, as necessary, transmit the information obtained pursuant to this Article to the requesting Central Authority in accordance with national law and procedure.

Article 88. Notification of the data subject

Where there is a risk that it may prejudice the effective carrying out of the request or application under this Regulation for which the information was transmitted, the obligation to notify the data subject pursuant to Article 14(1) to (4) of Regulation (EU) 2016/679 may be deferred until the request or application has been carried out.

Article 89. Non-disclosure of information

1. A Central Authority, court or competent authority shall not disclose or confirm information gathered or transmitted for the purposes of Chapters III to VI if it determines that to do so could jeopardise the health, safety or liberty of the child or another person.

2. A determination to that effect made in one Member State shall be taken into account by the Central Authorities, courts and competent authorities of the other Member States, in particular in cases of domestic violence.

3. Nothing in this Article shall impede the gathering and transmitting of information by and between Central Authorities, courts and competent authorities in so far as necessary to carry out the obligations under Chapters III to VI.

Article 90. Legalisation or other similar formality

No legalisation or other similar formality shall be required in the context of this Regulation.

Article 91. Languages

1. Without prejudice to point (a) of Article 55(2), where a translation or a transliteration is required under this Regulation, such translation or transliteration shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a decision given in another Member State is invoked or an application is made, in accordance with the law of that Member State.

2. The translations or transliterations of the translatable content of the free text fields of the certificates referred to in Articles 29, 36, 47, 49 and 66) may be into any other official language or languages of the institutions of the European Union that the Member State concerned has communicated in accordance with Article 103 it can accept.

3. Member States shall communicate to the Commission the official language or languages of the institutions of the European Union other than their own in which communications to the Central Authorities can be accepted.

4. Any translation required for the purposes of Chapters III and IV shall be done by a person qualified to do translations in one of the Member States.

CHAPTER VII DELEGATED ACTS

Article 92. Amendments to the Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 93 concerning the amendment of Annexes I to IX in order to update or to make technical changes to those Annexes.

Article 93. Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 92 shall be conferred on the Commission for an indeterminate period of time from 22 July 2019.

3. The delegation of power referred to in Article 92 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

6. A delegated act adopted pursuant to Article 92 shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

7. The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

CHAPTER VIII RELATIONS WITH OTHER INSTRUMENTS

Article 94. Relations with other instruments

1. Subject to the provisions of paragraph 2 of this Article and Articles 95 to 100, this Regulation shall, for the Member States, supersede conventions existing at the time of entry into force of Regulation (EC) No 2201/2003 which have been concluded between two or more Member States and relate to matters governed by this Regulation.

2. Finland and Sweden were provided with the option of declaring in accordance with Article 59(2) of Regulation (EC) No 2201/2003 and subject to the conditions set out in points (b) and (c) of that provision that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply, in whole or in part, in their mutual relations, in place of the rules of that Regulation. Their respective declarations have been published in the Official Journal of the European Union as an annex to Regulation (EC) No 2201/2003. They may be withdrawn, in whole or in part, at any moment by the said Member States.

3. The rules of jurisdiction in any future agreement to be concluded between

the Member States referred to in paragraph 2 which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.

4. The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.

5. Decisions handed down in any of the Nordic States which have made the declaration provided for in paragraph 2 under a forum of jurisdiction corresponding to one of those laid down in Chapter II, shall be recognised and enforced in the other Member States under the rules laid down in Section 1 of Chapter IV.

6. Member States shall send to the Commission:

(a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraph 3;

(b) any denunciations of, or amendments to, the agreements and uniform laws referred to in paragraphs 2 and 3.

Such information shall be published in the Official Journal of the European Union.

Article 95. Relations with certain multilateral conventions

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

(a) the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;

(b) the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages;

(c) the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations;

(d) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

Article 96. Relation with the 1980 Hague Convention

Where a child has been wrongfully removed to, or is being wrongfully retained in, a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, the provisions of the 1980 Hague Convention shall continue to apply as complemented by the provisions of Chapters III and VI of this Regulation. Where a decision ordering the return of the child pursuant to the 1980 Hague Convention which was given in a Member State has to be recognised and enforced in another Member State following a further wrongful removal or retention of the child, Chapter IV shall apply.

Article 97. Relation with the 1996 Hague Convention

1. As concerns the relation with the 1996 Hague Convention, this Regulation shall apply:

(a) subject to paragraph 2 of this Article, where the child concerned has his or her habitual residence in the territory of a Member State;

(b) as concerns the recognition and enforcement of a decision given by a court of a Member State in the territory of another Member State, even if the child concerned has his or her habitual residence in the territory of a State which is a contracting Party to the said Convention and in which this Regulation does not apply.

2. Notwithstanding paragraph 1,

(a) where the parties have agreed upon the jurisdiction of a court of a State Party to the 1996 Hague Convention in which this Regulation does not apply, Article 10 of that Convention shall apply;

(b) with respect to the transfer of jurisdiction between a court of a Member State and a court of a State Party to the 1996 Hague Convention in which this Regulation does not apply, Articles 8 and 9 of that Convention shall apply;

(c) where proceedings relating to parental responsibility are pending before a court of a State Party to the 1996 Hague Convention in which this Regulation does not apply at the time when a court of a Member State is seised of proceedings relating to the same child and involving the same cause of action, Article 13 of that Convention shall apply.

Article 98. Scope of effect

1. The agreements and conventions referred to in Articles 94 to 97 shall continue to have effect in relation to matters not governed by this Regulation.

2. The conventions referred to in Articles 95 to 97 of this Regulation, in particular the 1980 and 1996 Hague Conventions, shall continue to have effect between the Member States which are Party thereto, in compliance with Articles 95 to 97 of this Regulation.

Article 99. Treaties with the Holy See

1. This Regulation shall apply without prejudice to the International Treaty (Concordat) between the Holy See and Portugal, signed at the Vatican City on 18 May 2004.

2. Any decision as to the invalidity of a marriage taken under the Treaty referred to in paragraph 1 shall be recognised in the Member States on the conditions laid down in Subsection 1 of Section 1 of Chapter IV.

3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following international treaties with the Holy See:

(a) 'Concordato lateranense' of 11 February 1929 between Italy and the Holy See, modified by the agreement with additional Protocol signed in Rome on 18 February 1984;

(b) Agreement between the Holy See and Spain on legal affairs of 3 January 1979;

(c) Agreement between the Holy See and Malta on the recognition of civil effects to canonical marriages and to decisions of ecclesiastical authorities and tribunals on those marriages of 3 February 1993, including the Protocol of application of the same date, with the third Additional Protocol of 27 January 2014.

4. Recognition of the decisions provided for in paragraph 2 may, in Spain, Italy or Malta, be subject to the same procedures and the same checks as are applicable to decisions of the ecclesiastical courts handed down in accordance with the international treaties concluded with the Holy See referred to in paragraph 3.

5. Member States shall send to the Commission:

(a) a copy of the Treaties referred to in paragraphs 1 and 3;

(b) any denunciations of or amendments to those Treaties.

CHAPTER IX FINAL PROVISIONS

Article 100. Transitional provisions

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022.

2. Regulation (EC) No 2201/2003 shall continue to apply to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements which have become enforceable in the Member State where they were concluded before 1 August 2022 and which fall within the scope of that Regulation.

Article 101. Monitoring and Evaluation

1. By 2 August 2032, the Commission shall present to the European Parliament, to the Council and to the European Economic and Social Committee a report on the ex post evaluation of this Regulation supported by information supplied by the

Member States. The report shall be accompanied, where necessary, by a legislative proposal.

2. As of 2 August 2025, the Member States shall provide the Commission upon request, where available, with information relevant for the evaluation of the operation and application of this Regulation on:

- (a) the number of decisions in matrimonial matters or in matters of parental responsibility in which jurisdiction was based on the grounds laid down in this Regulation;
- (b) with regard to applications for enforcement of a decision as referred to in Article 28(1), the number of cases where enforcement has not occurred within six weeks from the moment the enforcement proceedings were initiated;
- (c) the number of applications for refusal of recognition of a decision pursuant to Article 40 and the number of cases in which the refusal of recognition was granted;
- (d) the number of applications for refusal of enforcement of a decision pursuant to Article 58 and the number of cases in which the refusal of enforcement was granted;
- (e) the number of appeals lodged pursuant to Articles 61 and 62, respectively.

Article 102. Member States with two or more legal systems

With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

- (a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;
- (b) any reference to nationality shall refer to the territorial unit designated by the law of that Member State;
- (c) any reference to the authority of a Member State shall refer to the authority of a territorial unit within that Member State which is concerned;
- (d) any reference to the rules of the requested Member State shall refer to the rules of the territorial unit in which jurisdiction, recognition or enforcement is invoked.

Article 103. Information to be communicated to the Commission

1. The Member States shall communicate to the Commission the following:

- (a) any authorities referred to in point (b) of point (2) and point (3) of Article 2(2) and Article 74(2);
- (b) the courts and authorities competent to issue certificates as referred to in Article 36(1) and Article 66 and the courts competent to rectify certificates as referred to in Article 37(1), Article 48(1), 49, and Article 66(3) in conjunction with Article 37(1);
- (c) the courts referred to in Article 30(3), Article 52, Article 40(1), Article 58(1) and Article 62 as well as the authorities and courts referred to in Article 61(2);
- (d) the authorities competent for enforcement referred to in Article 52;
- (e) the redress procedures referred to in Articles 61 and 62;
- (f) the names, addresses and means of communication for the Central Authorities designated pursuant to Article 76;
- (g) the categories of close relatives referred to in Article 82(2), where applicable;
- (h) the languages accepted for communications to Central Authorities pursuant to Article 91(3);
- (i) the languages accepted for the translations pursuant to Article 80(3), Article 81(2), Article 82(4) and Article 91(2).

2. The Member States shall communicate the information referred to in paragraph 1 to the Commission by 23 April 2021.

3. The Member States shall communicate to the Commission any changes to the information referred to in paragraph 1.

4. The Commission shall make the information referred to in paragraph 1 publicly available through appropriate means, including through the European e-Justice Portal.

Article 104. Repeal

1. Subject to Article 100(2) of this Regulation, Regulation (EC) No 2201/2003 is repealed from 1 August 2022.

2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex X.

Article 105. Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. This Regulation shall apply from 1 August 2022, with the exception of Articles 92, 93 and 103, which shall apply from 22 July 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Luxembourg, 25 June 2019.

ANNEX X

CORRELATION TABLE

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PART IV

INTERNATIONAL CONVENTIONS

HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 1980

See Child Abduction and Custody Act 1985, Schedule 1, p 123 above.

HAGUE CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND ON THEIR RECOGNITION 1986

See Recognition of Trusts Act 1987, Schedule, p 144 above.

CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN*

Concluded 19 October 1996

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors is in need of revision,

Desiring to establish common provisions to this effect, taking into account the United Nations Convention on the Rights of the Child of 20 November 1989,

Have agreed on the following provisions

CHAPTER I SCOPE OF THE CONVENTION

Article 1

(1) The objects of the present Convention are—

(a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

(b) to determine which law is to be applied by such authorities in exercising their jurisdiction;

(c) to determine the law applicable to parental responsibility;

(d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;

* © Hague Conference on Private International Law.

- (e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.
- (2) For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

Article 2

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

Article 3

The measures referred to in Article 1 may deal in particular with—

- (a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
- (b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;
- (c) guardianship, curatorship and analogous institutions;
- (d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- (e) the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution;
- (f) the supervision by a public authority of the care of a child by any person having charge of the child;
- (g) the administration, conservation or disposal of the child's property.

Article 4

The Convention does not apply to—

- (a) the establishment or contesting of a parent-child relationship;
- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- (c) the name and forenames of the child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) social security;
- (h) public measures of a general nature in matters of education or health;
- (i) measures taken as a result of penal offences committed by children;
- (j) decisions on the right of asylum and on immigration.

CHAPTER II JURISDICTION

Article 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 6

(1) For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

(2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

Article 7

(1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

(b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

(2) The removal or the retention of a child is to be considered wrongful where—

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

(3) So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

Article 8

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

– request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

– suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

(2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

(a) a State of which the child is a national,

(b) a State in which property of the child is located,

(c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,

(d) a State with which the child has a substantial connection

(3) The authorities concerned may proceed to an exchange of views.

(4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

Article 9

(1) If the authorities of a Contracting State referred to in Article 8, paragraph 2,

consider that they are better placed in the particular case to assess the child's best interests, they may either

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or

- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

(2) The authorities concerned may proceed to an exchange of views.

(3) The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

Article 10

(1) Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

(a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and

(b) the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

(2) The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

Article 11

(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 12

(1) Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and

taken by the authorities of another State are recognised in the Contracting State in question.

Article 13

(1) The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

(2) The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

Article 14

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

CHAPTER III APPLICABLE LAW

Article 15

(1) In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

(2) However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

(3) If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

Article 16

(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

(2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

(4) If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

Article 17

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

Article 18

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

Article 19

(1) The validity of a transaction entered into between a third party and another

person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

(2) The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 21

(1) In this Chapter the term 'law' means the law in force in a State other than its choice of law rules.

(2) However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

CHAPTER IV RECOGNITION AND ENFORCEMENT

Article 23

(1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

(2) Recognition may however be refused—

(a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

(b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

(c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

(d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

(e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

(f) if the procedure provided in Article 33 has not been complied with.

Article 24

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26

(1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

(2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

(3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

CHAPTER V CO-OPERATION

Article 29

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 30

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

(2) They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

Article 31

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to—

(a) facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;

(b) facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;

(c) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

Article 32

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the

child is habitually resident and present may, directly or through public authorities or other bodies,

- (a) provide a report on the situation of the child;
- (b) request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

Article 33

(1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by kafala or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

(2) The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

Article 34

(1) Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

(2) A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

Article 35

(1) The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

(2) The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

(3) An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

(4) Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

Article 37

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

Article 38

(1) Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

(2) Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

CHAPTER VI GENERAL PROVISIONS

Article 40

(1) The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

(2) The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

(3) Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

Article 45

(1) The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

(2) The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply

the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units—

(1) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

(2) any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;

(3) any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;

(4) any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

(5) any reference to the State whose authorities are seized of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seized of such application;

(6) any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;

(7) any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;

(8) any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

(9) any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

(10) any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply—

(a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

(b) in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply—

(a) if there are rules in force in such a State identifying which among such laws applies, that law applies;

(b) in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

This Convention shall not affect the application of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 51

In relations between the Contracting States this Convention replaces the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, and the Convention governing the guardianship of minors, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

Article 52

(1) This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

(3) Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

(4) The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 53

(1) The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

(2) The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

(1) Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

(2) However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

(1) A Contracting State may, in accordance with Article 60,

(a) reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

(b) reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

(2) The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII
FINAL CLAUSES

Article 57

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 60

(1) Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

(2) Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

(3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 61

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

(2) Thereafter the Convention shall enter into force—

(a) for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

(b) for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

(c) for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 62

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following—

- (a) the signatures, ratifications, acceptances and approvals referred to in Article 57;
- (b) the accessions and objections raised to accessions referred to in Article 58;
- (c) the date on which the Convention enters into force in accordance with Article 61;
- (d) the declarations referred to in Articles 34, paragraph 2, and 59;
- (e) the agreements referred to in Article 39;
- (f) the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;
- (g) the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS*

(Concluded 30 June 2005)

CHAPTER I – SCOPE AND DEFINITIONS**Article 1. Scope**

1. This Convention shall apply in international cases to exclusive choice of court agreements concluded in civil or commercial matters.

2. For the purposes of Chapter II, a case is international unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State.

3. For the purposes of Chapter III, a case is international where recognition or enforcement of a foreign judgment is sought.

Article 2. Exclusions from scope

- 1. This Convention shall not apply to exclusive choice of court agreements—
 - (a) to which a natural person acting primarily for personal, family or household purposes (a consumer) is a party;
 - (b) relating to contracts of employment, including collective agreements.
- 2. This Convention shall not apply to the following matters—

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- (a) the status and legal capacity of natural persons;
- (b) maintenance obligations;
- (c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
- (d) wills and succession;
- (e) insolvency, composition and analogous matters;
- (f) the carriage of passengers and goods;
- (g) marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage;
- (h) anti-trust (competition) matters;
- (i) liability for nuclear damage;
- (j) claims for personal injury brought by or on behalf of natural persons;
- (k) tort or delict claims for damage to tangible property that do not arise from a contractual relationship;
- (l) rights *in rem* in immovable property, and tenancies of immovable property;
- (m) the validity, nullity, or dissolution of legal persons, and the validity of decisions of their organs;
- (n) the validity of intellectual property rights other than copyright and related rights;
- (o) infringement of intellectual property rights other than copyright and related rights, except where infringement proceedings are brought for breach of a contract between the parties relating to such rights, or could have been brought for breach of that contract;
- (p) the validity of entries in public registers.

3. Notwithstanding paragraph 2, proceedings are not excluded from the scope of this Convention where a matter excluded under that paragraph arises merely as a preliminary question and not as an object of the proceedings. In particular, the mere fact that a matter excluded under paragraph 2 arises by way of defence does not exclude proceedings from the Convention, if that matter is not an object of the proceedings.

4. This Convention shall not apply to arbitration and related proceedings.

5. Proceedings are not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, is a party thereto.

6. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

Article 3. Exclusive choice of court agreements

For the purposes of this Convention—

(a) “exclusive choice of court agreement” means an agreement concluded by two or more parties that meets the requirements of paragraph c) and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one Contracting State or one or more specific courts of one Contracting State to the exclusion of the jurisdiction of any other courts;

(b) a choice of court agreement which designates the courts of one Contracting State or one or more specific courts of one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise;

(c) an exclusive choice of court agreement must be concluded or documented—

(i) in writing; or

(ii) by any other means of communication which renders information accessible so as to be usable for subsequent reference;

(d) an exclusive choice of court agreement that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The

validity of the exclusive choice of court agreement cannot be contested solely on the ground that the contract is not valid.

Article 4. Other definitions

1. In this Convention, “judgment” means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.

2. For the purposes of this Convention, an entity or person other than a natural person shall be considered to be resident in the State—

- (a) where it has its statutory seat;
- (b) under whose law it was incorporated or formed;
- (c) where it has its central administration; or
- (d) where it has its principal place of business.

CHAPTER II – JURISDICTION

Article 5 Jurisdiction of the chosen court

1. The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State.

2. A court that has jurisdiction under paragraph 1 shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State.

3. The preceding paragraphs shall not affect rules—

- (a) on jurisdiction related to subject matter or to the value of the claim;
- (b) on the internal allocation of jurisdiction among the courts of a Contracting State.

However, where the chosen court has discretion as to whether to transfer a case, due consideration should be given to the choice of the parties.

Article 6. Obligations of a court not chosen

A court of a Contracting State other than that of the chosen court shall suspend or dismiss proceedings to which an exclusive choice of court agreement applies unless—

- (a) the agreement is null and void under the law of the State of the chosen court;
- (b) a party lacked the capacity to conclude the agreement under the law of the State of the court seised;
- (c) giving effect to the agreement would lead to a manifest injustice or would be manifestly contrary to the public policy of the State of the court seised;
- (d) for exceptional reasons beyond the control of the parties, the agreement cannot reasonably be performed; or
- (e) the chosen court has decided not to hear the case.

Article 7. Interim measures of protection

Interim measures of protection are not governed by this Convention. This Convention neither requires nor precludes the grant, refusal or termination of interim measures of protection by a court of a Contracting State and does not affect whether or not a party may request or a court should grant, refuse or terminate such measures.

CHAPTER III – RECOGNITION AND ENFORCEMENT

Article 8 Recognition and enforcement

1. A judgment given by a court of a Contracting State designated in an exclu-

sive choice of court agreement shall be recognised and enforced in other Contracting States in accordance with this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.

2. Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default.

3. A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

4. Recognition or enforcement may be postponed or refused if the judgment is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

5. This Article shall also apply to a judgment given by a court of a Contracting State pursuant to a transfer of the case from the chosen court in that Contracting State as permitted by Article 5, paragraph 3. However, where the chosen court had discretion as to whether to transfer the case to another court, recognition or enforcement of the judgment may be refused against a party who objected to the transfer in a timely manner in the State of origin.

Article 9. Refusal of recognition or enforcement

Recognition or enforcement may be refused if—

- (a) the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;
- (b) a party lacked the capacity to conclude the agreement under the law of the requested State;
- (c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim,
 - (i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or
 - (ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;
- (d) the judgment was obtained by fraud in connection with a matter of procedure;
- (e) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State;
- (f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
- (g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

Article 10. Preliminary questions

1. Where a matter excluded under Article 2, paragraph 2, or under Article 21, arose as a preliminary question, the ruling on that question shall not be recognised or enforced under this Convention.

2. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded under Article 2, paragraph 2.

3. However, in the case of a ruling on the validity of an intellectual property right other than copyright or a related right, recognition or enforcement of a judgment may be refused or postponed under the preceding paragraph only where—

(a) that ruling is inconsistent with a judgment or a decision of a competent authority on that matter given in the State under the law of which the intellectual property right arose; or

(b) proceedings concerning the validity of the intellectual property right are pending in that State.

4. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded pursuant to a declaration made by the requested State under Article 21.

Article 11. Damages

1. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.

2. The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

Article 12. Judicial settlements (*transactions judiciaires*)

Judicial settlements (*transactions judiciaires*) which a court of a Contracting State designated in an exclusive choice of court agreement has approved, or which have been concluded before that court in the course of proceedings, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment.

Article 13. Documents to be produced

1. The party seeking recognition or applying for enforcement shall produce—

(a) a complete and certified copy of the judgment;

(b) the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence;

(c) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party;

(d) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;

(e) in the case referred to in Article 12, a certificate of a court of the State of origin that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin.

2. If the terms of the judgment do not permit the court addressed to verify whether the conditions of this Chapter have been complied with, that court may require any necessary documents.

3. An application for recognition or enforcement may be accompanied by a document, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law.

4. If the documents referred to in this Article are not in an official language of the requested State, they shall be accompanied by a certified translation into an official language, unless the law of the requested State provides otherwise.

Article 14. Procedure

The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State unless this Convention provides otherwise. The court addressed shall act expeditiously.

Article 15. Severability

Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention.

CHAPTER IV – GENERAL CLAUSES

Article 16. Transitional provisions

1. This Convention shall apply to exclusive choice of court agreements concluded after its entry into force for the State of the chosen court.

2. This Convention shall not apply to proceedings instituted before its entry into force for the State of the court seised.

Article 17. Contracts of insurance and reinsurance

1. Proceedings under a contract of insurance or reinsurance are not excluded from the scope of this Convention on the ground that the contract of insurance or reinsurance relates to a matter to which this Convention does not apply.

2. Recognition and enforcement of a judgment in respect of liability under the terms of a contract of insurance or reinsurance may not be limited or refused on the ground that the liability under that contract includes liability to indemnify the insured or reinsured in respect of—

- (a) a matter to which this Convention does not apply; or
- (b) an award of damages to which Article 11 might apply.

...

Article 19. Declarations limiting jurisdiction

A State may declare that its courts may refuse to determine disputes to which an exclusive choice of court agreement applies if, except for the location of the chosen court, there is no connection between that State and the parties or the dispute.

Article 20. Declarations limiting recognition and enforcement

A State may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State, and the relationship of the parties and all other elements relevant to the dispute, other than the location of the chosen court, were connected only with the requested State.

Article 21. Declarations with respect to specific matters

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.

2. With regard to that matter, the Convention shall not apply—

- (a) in the Contracting State that made the declaration;
- (b) in other Contracting States, where an exclusive choice of court agreement designates the courts, or one or more specific courts, of the State that made the declaration.

Article 22. Reciprocal declarations on non-exclusive choice of court agreements

1. A Contracting State may declare that its courts will recognise and enforce judgments given by courts of other Contracting States designated in a choice of court agreement concluded by two or more parties that meets the requirements of Article 3, paragraph c), and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, a court or courts of one or more Contracting States (a non-exclusive choice of court agreement).

2. Where recognition or enforcement of a judgment given in a Contracting

State that has made such a declaration is sought in another Contracting State that has made such a declaration, the judgment shall be recognised and enforced under this Convention, if—

- (a) the court of origin was designated in a non-exclusive choice of court agreement;
- (b) there exists neither a judgment given by any other court before which proceedings could be brought in accordance with the non-exclusive choice of court agreement, nor a proceeding pending between the same parties in any other such court on the same cause of action; and
- (c) the court of origin was the court first seised.

Article 23. Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 24. Review of operation of the Convention

The Secretary General of the Hague Conference on Private International Law shall at regular intervals make arrangements for—

- (a) review of the operation of this Convention, including any declarations; and
- (b) consideration of whether any amendments to this Convention are desirable.

Article 25. Non-unified legal systems

1. In relation to a Contracting State in which two or more systems of law apply in different territorial units with regard to any matter dealt with in this Convention—

- (a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;
- (b) any reference to residence in a State shall be construed as referring, where appropriate, to residence in the relevant territorial unit;
- (c) any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit;
- (d) any reference to a connection with a State shall be construed as referring, where appropriate, to a connection with the relevant territorial unit.

2. Notwithstanding the preceding paragraph, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

3. A court in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a judgment from another Contracting State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 26. Relationship with other international instruments

1. This Convention shall be interpreted so far as possible to be compatible with other treaties in force for Contracting States, whether concluded before or after this Convention.

2. This Convention shall not affect the application by a Contracting State of a treaty, whether concluded before or after this Convention, in cases where none of the parties is resident in a Contracting State that is not a Party to the treaty.

3. This Convention shall not affect the application by a Contracting State of a treaty that was concluded before this Convention entered into force for that Contracting State, if applying this Convention would be inconsistent with the obligations of that Contracting State to any non-Contracting State. This paragraph

shall also apply to treaties that revise or replace a treaty concluded before this Convention entered into force for that Contracting State, except to the extent that the revision or replacement creates new inconsistencies with this Convention.

4. This Convention shall not affect the application by a Contracting State of a treaty, whether concluded before or after this Convention, for the purposes of obtaining recognition or enforcement of a judgment given by a court of a Contracting State that is also a Party to that treaty. However, the judgment shall not be recognised or enforced to a lesser extent than under this Convention.

5. This Convention shall not affect the application by a Contracting State of a treaty which, in relation to a specific matter, governs jurisdiction or the recognition or enforcement of judgments, even if concluded after this Convention and even if all States concerned are Parties to this Convention. This paragraph shall apply only if the Contracting State has made a declaration in respect of the treaty under this paragraph. In the case of such a declaration, other Contracting States shall not be obliged to apply this Convention to that specific matter to the extent of any inconsistency, where an exclusive choice of court agreement designates the courts, or one or more specific courts, of the Contracting State that made the declaration.

6. This Convention shall not affect the application of the rules of a Regional Economic Integration Organisation that is a Party to this Convention, whether adopted before or after this Convention—

(a) where none of the parties is resident in a Contracting State that is not a Member State of the Regional Economic Integration Organisation;

(b) as concerns the recognition or enforcement of judgments as between Member States of the Regional Economic Integration Organisation.

CHAPTER V – FINAL CLAUSES

Article 28. Declarations with respect to non-unified legal systems

1. If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. A declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.

4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 29. Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.

3. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation declares in accordance with Article 30 that its Member States will not be Parties to this Convention.

4. Any reference to a “Contracting State” or “State” in this Convention shall

apply equally, where appropriate, to a Regional Economic Integration Organisation that is a Party to it.

Article 30. Accession by a Regional Economic Integration Organisation without its Member States

1. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it exercises competence over all the matters governed by this Convention and that its Member States will not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation.

2. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a “Contracting State” or “State” in this Convention shall apply equally, where appropriate, to the Member States of the Organisation.

Article 31. Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession referred to in Article 27.

2. Thereafter this Convention shall enter into force—

(a) for each State or Regional Economic Integration Organisation subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

(b) for a territorial unit to which this Convention has been extended in accordance with Article 28, paragraph 1, on the first day of the month following the expiration of three months after the notification of the declaration referred to in that Article.

Article 32. Declarations

1. Declarations referred to in Articles 19, 20, 21, 22 and 26 may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

2. Declarations, modifications and withdrawals shall be notified to the depositary.

3. A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

4. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary.

5. A declaration under Articles 19, 20, 21 and 26 shall not apply to exclusive choice of court agreements concluded before it takes effect.

Article 33. Denunciation

1. This Convention may be denounced by notification in writing to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE*

(Concluded 23 November 2007)

PREAMBLE

THE STATES SIGNATORY TO THE PRESENT CONVENTION,

Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance,

Aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair,

Wishing to build upon the best features of existing Hague Conventions and other international instruments, in particular the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956,

Seeking to take advantage of advances in technologies and to create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities,

Recalling that, in accordance with Articles 3 and 27 of the United Nations Convention on the Rights of the Child of 20 November 1989,

– in all actions concerning children the best interests of the child shall be a primary consideration,

– every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,

– the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, and

– States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child,

Have resolved to conclude this Convention and have agreed upon the following provisions:

CHAPTER I – OBJECT, SCOPE AND DEFINITIONS**Article 1. Object**

The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by—

(a) establishing a comprehensive system of co-operation between the authorities of the Contracting States;

(b) making available applications for the establishment of maintenance decisions;

(c) providing for the recognition and enforcement of maintenance decisions; and

(d) requiring effective measures for the prompt enforcement of maintenance decisions.

Article 2. Scope

(1) This Convention shall apply—

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(a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;

(b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph (a); and

(c) with the exception of Chapters II and III, to spousal support.

(2) Any Contracting State may reserve, in accordance with Article 62, the right to limit the application of the Convention under sub-paragraph (1)(a), to persons who have not attained the age of 18 years. A Contracting State which makes this reservation shall not be entitled to claim the application of the Convention to persons of the age excluded by its reservation.

(3) Any Contracting State may declare in accordance with Article 63 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention.

(4) The provisions of this Convention shall apply to children regardless of the marital status of the parents.

Article 3. Definitions

For the purposes of this Convention—

(a) ‘creditor’ means an individual to whom maintenance is owed or is alleged to be owed;

(b) ‘debtor’ means an individual who owes or who is alleged to owe maintenance;

(c) ‘legal assistance’ means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings;

(d) ‘agreement in writing’ means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;

(e) ‘maintenance arrangement’ means an agreement in writing relating to the payment of maintenance which—

(i) has been formally drawn up or registered as an authentic instrument by a competent authority; or

(ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority;

(f) ‘vulnerable person’ means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself.

CHAPTER II – ADMINISTRATIVE CO-OPERATION

Article 4. Designation of Central Authorities

(1) A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

(3) The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph (2), shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law at the time when the instrument of ratification or accession is deposited or when a declaration is submitted in accordance with Article 61. Contracting States shall promptly inform the Permanent Bureau of any changes.

Article 5. General functions of Central Authorities

Central Authorities shall—

- (a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;
- (b) seek as far as possible solutions to difficulties which arise in the application of the Convention.

Article 6. Specific functions of Central Authorities

(1) Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall—

- (a) transmit and receive such applications;
 - (b) initiate or facilitate the institution of proceedings in respect of such applications.
- (2) In relation to such applications they shall take all appropriate measures—
- (a) where the circumstances require, to provide or facilitate the provision of legal assistance;
 - (b) to help locate the debtor or the creditor;
 - (c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;
 - (d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
 - (e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
 - (f) to facilitate the collection and expeditious transfer of maintenance payments;
 - (g) to facilitate the obtaining of documentary or other evidence;
 - (h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;
 - (i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;
 - (j) to facilitate service of documents.

(3) The functions of the Central Authority under this Article may, to the extent permitted under the law of its State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes.

(4) Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested State.

Article 7. Requests for specific measures

(1) A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under Article 6(2)(b), (c),

(g), (h), (i) and (j) when no application under Article 10 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in making an application under Article 10 or in determining whether such an application should be initiated.

(2) A Central Authority may also take specific measures on the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting State.

Article 8. Central Authority costs

(1) Each Central Authority shall bear its own costs in applying this Convention.

(2) Central Authorities may not impose any charge on an applicant for the provision of their services under the Convention save for exceptional costs arising from a request for a specific measure under Article 7.

(3) The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

CHAPTER III – APPLICATIONS THROUGH CENTRAL AUTHORITIES

Article 9. Application through Central Authorities

An application under this Chapter shall be made through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State. For the purpose of this provision, residence excludes mere presence.

Article 10. Available applications

(1) The following categories of application shall be available to a creditor in a requesting State seeking to recover maintenance under this Convention—

- (a) recognition or recognition and enforcement of a decision;
- (b) enforcement of a decision made or recognised in the requested State;
- (c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage;
- (d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible, or is refused, because of the lack of a basis for recognition and enforcement under Article 20, or on the grounds specified in Article 22(b) or (e);
- (e) modification of a decision made in the requested State;
- (f) modification of a decision made in a State other than the requested State.

(2) The following categories of application shall be available to a debtor in a requesting State against whom there is an existing maintenance decision—

- (a) recognition of a decision, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested State;
- (b) modification of a decision made in the requested State;
- (c) modification of a decision made in a State other than the requested State.

(3) Save as otherwise provided in this Convention, the applications in paragraphs (1) and (2) shall be determined under the law of the requested State, and applications in paragraphs (1)(c) to (f) and (2)(b) and (c) shall be subject to the jurisdictional rules applicable in the requested State.

Article 11. Application contents

(1) All applications under Article 10 shall as a minimum include—

- (a) a statement of the nature of the application or applications;
- (b) the name and contact details, including the address and date of birth of the applicant;
- (c) the name and, if known, address and date of birth of the respondent;

- (d) the name and date of birth of any person for whom maintenance is sought;
 - (e) the grounds upon which the application is based;
 - (f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;
 - (g) save in an application under Article 10(1)(a) and (2)(a), any information or document specified by declaration in accordance with Article 63 by the requested State;
 - (h) the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application.
- (2) As appropriate, and to the extent known, the application shall in addition in particular include—
- (a) the financial circumstances of the creditor;
 - (b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;
 - (c) any other information that may assist with the location of the respondent.
- (3) The application shall be accompanied by any necessary supporting information or documentation including documentation concerning the entitlement of the applicant to free legal assistance. In the case of applications under Article 10(1)(a) and (2)(a), the application shall be accompanied only by the documents listed in Article 25.
- (4) An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.

Article 12. Transmission, receipt and processing of applications and cases through Central Authorities

- (1) The Central Authority of the requesting State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.
- (2) The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit the application on behalf of and with the consent of the applicant to the Central Authority of the requested State. The application shall be accompanied by the transmittal form set out in Annex 1. The Central Authority of the requesting State shall, when requested by the Central Authority of the requested State, provide a complete copy certified by the competent authority in the State of origin of any document specified under Articles 16(3), 25(1)(a), (b) and (d) and (3)(b) and 30(3).
- (3) The requested Central Authority shall, within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Annex 2, and inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.
- (4) Within three months after the acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.
- (5) Requesting and requested Central Authorities shall keep each other informed of—
- (a) the person or unit responsible for a particular case;
 - (b) the progress of the case,
- and shall provide timely responses to enquiries.

(6) Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

(7) Central Authorities shall employ the most rapid and efficient means of communication at their disposal.

(8) A requested Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled. In such case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal.

(9) The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or information. If the requesting Central Authority does not do so within three months or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall inform the requesting Central Authority of this decision.

Article 13. Means of communication

Any application made through Central Authorities of the Contracting States in accordance with this Chapter, and any document or information appended thereto or provided by a Central Authority, may not be challenged by the respondent by reason only of the medium or means of communication employed between the Central Authorities concerned.

Article 14. Effective access to procedures

(1) The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under this Chapter.

(2) To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14 to 17 unless paragraph (3) applies.

(3) The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary free of charge.

(4) Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.

(5) No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings under the Convention.

Article 15. Free legal assistance for child support applications

(1) The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

(2) Notwithstanding paragraph (1), the requested State may, in relation to applications other than those under Article 10(1)(a) and (b) and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded.

Article 16. Declaration to permit use of child-centred means test

(1) Notwithstanding Article 15(1), a State may declare, in accordance with Article 63, that it will provide free legal assistance in respect of applications other than under Article 10(1)(a) and (b) and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child.

(2) A State shall, at the time of making such a declaration, provide information to the Permanent Bureau of the Hague Conference on Private International Law concerning the manner in which the assessment of the child's means will be

carried out, including the financial criteria which would need to be met to satisfy the test.

(3) An application referred to in paragraph (1), addressed to a State which has made the declaration referred to in that paragraph, shall include a formal attestation by the applicant stating that the child's means meet the criteria referred to in paragraph (2). The requested State may only request further evidence of the child's means if it has reasonable grounds to believe that the information provided by the applicant is inaccurate.

(4) If the most favourable legal assistance provided for by the law of the requested State in respect of applications under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a child is more favourable than that provided for under paragraphs (1) to (3), the most favourable legal assistance shall be provided.

Article 17. Applications not qualifying under Article 15 or Article 16

In the case of all applications under this Convention other than those under Article 15 or Article 16—

- (a) the provision of free legal assistance may be made subject to a means or a merits test;
- (b) an applicant, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances.

CHAPTER IV – RESTRICTIONS ON BRINGING PROCEEDINGS

Article 18. Limit on proceedings

(1) Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision or to make a new decision cannot be brought by the debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.

(2) Paragraph (1) shall not apply—

- (a) where, except in disputes relating to maintenance obligations in respect of children, there is agreement in writing between the parties to the jurisdiction of that other Contracting State;
- (b) where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
- (c) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or
- (d) where the decision made in the State of origin cannot be recognised or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.

CHAPTER V – RECOGNITION AND ENFORCEMENT

Article 19. Scope of the Chapter

(1) This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term 'decision' also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses.

(2) If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations.

(3) For the purpose of paragraph (1), 'administrative authority' means a public body whose decisions, under the law of the State where it is established—

(a) may be made the subject of an appeal to or review by a judicial authority; and

(b) have a similar force and effect to a decision of a judicial authority on the same matter.

(4) This Chapter also applies to maintenance arrangements in accordance with Article 30.

(5) The provisions of this Chapter shall apply to a request for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 37.

Article 20. Bases for recognition and enforcement

(1) A decision made in one Contracting State ('the State of origin') shall be recognised and enforced in other Contracting States if—

(a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;

(b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

(c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;

(d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;

(e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or

(f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.

(2) A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph (1)(c), (e) or (f).

(3) A Contracting State making a reservation under paragraph (2) shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.

(4) A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph (2), and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) b).

(5) A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph (1)(c), (e) or (f) shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.

(6) A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

Article 21. Severability and partial recognition and enforcement

(1) If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced.

(2) Partial recognition or enforcement of a decision can always be applied for.

Article 22. Grounds for refusing recognition and enforcement

Recognition and enforcement of a decision may be refused if—

- (a) recognition and enforcement of the decision is manifestly incompatible with the public policy ('ordre public') of the State addressed;
- (b) the decision was obtained by fraud in connection with a matter of procedure;
- (c) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;
- (d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;
- (e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin—
 - (i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
 - (ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or
- (f) the decision was made in violation of Article 18.

Article 23. Procedure on an application for recognition and enforcement

(1) Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed.

(2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either—

- (a) refer the application to the competent authority which shall without delay declare the decision enforceable or register the decision for enforcement; or
- (b) if it is the competent authority take such steps itself.

(3) Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement.

(4) A declaration or registration may be refused only on the ground set out in Article 22(a). At this stage neither the applicant nor the respondent is entitled to make any submissions.

(5) The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs (2) and (3), or the refusal thereof in accordance with paragraph (4), and may bring a challenge or appeal on fact and on a point of law.

(6) A challenge or an appeal is to be lodged within 30 days of notification under paragraph (5). If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.

(7) A challenge or appeal may be founded only on the following—

- (a) the grounds for refusing recognition and enforcement set out in Article 22;
- (b) the bases for recognition and enforcement under Article 20;
- (c) the authenticity or integrity of any document transmitted in accordance with Article 25(1)(a), (b) or (d) or (3)(b).

(8) A challenge or an appeal by a respondent may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

(9) The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.

(10) A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

(11) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 24. Alternative procedure on an application for recognition and enforcement

(1) Notwithstanding Article 23(2) to (11), a State may declare, in accordance with Article 63, that it will apply the procedure for recognition and enforcement set out in this Article.

(2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either—

(a) refer the application to the competent authority which shall decide on the application for recognition and enforcement; or

(b) if it is the competent authority, take such a decision itself.

(3) A decision on recognition and enforcement shall be given by the competent authority after the respondent has been duly and promptly notified of the proceedings and both parties have been given an adequate opportunity to be heard.

(4) The competent authority may review the grounds for refusing recognition and enforcement set out in Article 22(a), (c) and (d) of its own motion. It may review any grounds listed in Articles 20, 22 and 23(7) (c) if raised by the respondent or if concerns relating to those grounds arise from the face of the documents submitted in accordance with Article 25.

(5) A refusal of recognition and enforcement may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

(6) Any appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

(7) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 25. Documents

(1) An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following—

(a) a complete text of the decision;

(b) a document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements;

(c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law;

(d) where necessary, a document showing the amount of any arrears and the date such amount was calculated;

(e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations;

(f) where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin.

(2) Upon a challenge or appeal under Article 23(7) (c) or upon request by the competent authority in the State addressed, a complete copy of the document concerned, certified by the competent authority in the State of origin, shall be provided promptly—

(a) by the Central Authority of the requesting State, where the application has been made in accordance with Chapter III;

(b) by the applicant, where the request has been made directly to a competent authority of the State addressed.

(3) A Contracting State may specify in accordance with Article 57—

(a) that a complete copy of the decision certified by the competent authority in the State of origin must accompany the application;

(b) circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision drawn up by the competent authority of the State of origin, which may be made in the form recommended and published by the Hague Conference on Private International Law; or

(c) that it does not require a document stating that the requirements of Article 19(3) are met.

Article 26. Procedure on an application for recognition

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

Article 27. Findings of fact

Any competent authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 28. No review of the merits

There shall be no review by any competent authority of the State addressed of the merits of a decision.

Article 29. Physical presence of the child or the applicant not required

The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter.

Article 30. Maintenance arrangements

(1) A maintenance arrangement made in a Contracting State shall be entitled to recognition and enforcement as a decision under this Chapter provided that it is enforceable as a decision in the State of origin.

(2) For the purpose of Article 10(1)(a) and (b) and (2)(a), the term ‘decision’ includes a maintenance arrangement.

(3) An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following—

(a) a complete text of the maintenance arrangement; and

(b) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin.

(4) Recognition and enforcement of a maintenance arrangement may be refused if—

(a) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed;

(b) the maintenance arrangement was obtained by fraud or falsification;

(c) the maintenance arrangement is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

(5) The provisions of this Chapter, with the exception of Articles 20, 22, 23(7) and 25(1) and (3), shall apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement save that—

(a) a declaration or registration in accordance with Article 23(2) and (3) may be refused only on the ground set out in paragraph 4 a);

(b) a challenge or appeal as referred to in Article 23(6) may be founded only on the following—

(i) the grounds for refusing recognition and enforcement set out in paragraph (4);

(ii) the authenticity or integrity of any document transmitted in accordance with paragraph (3);

(c) as regards the procedure under Article 24(4), the competent authority may review of its own motion the ground for refusing recognition and enforcement set out in paragraph 4(a) of this Article. It may review all grounds listed in paragraph (4) of this Article and the authenticity or integrity of any document transmitted in accordance with paragraph (3) if raised by the respondent or if concerns relating to those grounds arise from the face of those documents.

(6) Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.

(7) A State may declare, in accordance with Article 63, that applications for recognition and enforcement of a maintenance arrangement shall only be made through Central Authorities.

(8) A Contracting State may, in accordance with Article 62, reserve the right not to recognise and enforce a maintenance arrangement.

Article 31. Decisions produced by the combined effect of provisional and confirmation orders

Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State ('the confirming State') confirming the provisional order—

(a) each of those States shall be deemed for the purposes of this Chapter to be a State of origin;

(b) the requirements of Article 22(e) shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;

(c) the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and

(d) Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State.

CHAPTER VI – ENFORCEMENT BY THE STATE ADDRESSED

Article 32. Enforcement under internal law

(1) Subject to the provisions of this Chapter, enforcement shall take place in accordance with the law of the State addressed.

(2) Enforcement shall be prompt.

(3) In the case of applications through Central Authorities, where a decision has been declared enforceable or registered for enforcement under Chapter V, enforcement shall proceed without the need for further action by the applicant.

(4) Effect shall be given to any rules applicable in the State of origin of the decision relating to the duration of the maintenance obligation.

(5) Any limitation on the period for which arrears may be enforced shall be determined either by the law of the State of origin of the decision or by the law of the State addressed, whichever provides for the longer limitation period.

Article 33. Non-discrimination

The State addressed shall provide at least the same range of enforcement methods for cases under the Convention as are available in domestic cases.

Article 34. Enforcement measures

(1) Contracting States shall make available in internal law effective measures to enforce decisions under this Convention.

(2) Such measures may include—

- (a) wage withholding;
- (b) garnishment from bank accounts and other sources;
- (c) deductions from social security payments;
- (d) lien on or forced sale of property;
- (e) tax refund withholding;
- (f) withholding or attachment of pension benefits;
- (g) credit bureau reporting;
- (h) denial, suspension or revocation of various licenses (for example, driving licenses);
- (i) the use of mediation, conciliation or similar processes to bring about voluntary compliance.

Article 35. Transfer of funds

(1) Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.

(2) A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.

CHAPTER VII – PUBLIC BODIES

Article 36. Public bodies as applicants

(1) For the purposes of applications for recognition and enforcement under Article 10(1)(a) and (b) and cases covered by Article 20(4), ‘creditor’ includes a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.

(2) The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

(3) A public body may seek recognition or claim enforcement of—

- (a) a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
- (b) a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance.

(4) The public body seeking recognition or claiming enforcement of a decision shall upon request furnish any document necessary to establish its right under paragraph (2) and that benefits have been provided to the creditor.

CHAPTER VIII – GENERAL PROVISIONS

Article 37. Direct requests to competent authorities

(1) The Convention shall not exclude the possibility of recourse to such procedures as may be available under the internal law of a Contracting State allowing a person (an applicant) to seize directly a competent authority of that State in a matter governed by the Convention including, subject to Article 18, for the purpose of having a maintenance decision established or modified.

(2) Articles 14(5) and 17(b) and the provisions of Chapters V, VI, VII and this Chapter, with the exception of Articles 40(2), 42, 43(3), 44(3), 45 and 55, shall apply in relation to a request for recognition and enforcement made directly to a competent authority in a Contracting State.

(3) For the purpose of paragraph (2), Article 2(1)(a) shall apply to a decision granting maintenance to a vulnerable person over the age specified in that sub-

paragraph where such decision was rendered before the person reached that age and provided for maintenance beyond that age by reason of the impairment.

Article 38. Protection of personal data

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 39. Confidentiality

Any authority processing information shall ensure its confidentiality in accordance with the law of its State.

Article 40. Non-disclosure of information

(1) An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person.

(2) A determination to this effect made by one Central Authority shall be taken into account by another Central Authority, in particular in cases of family violence.

(3) Nothing in this Article shall impede the gathering and transmitting of information by and between authorities in so far as necessary to carry out the obligations under the Convention.

Article 41. No legalisation

No legalisation or similar formality may be required in the context of this Convention.

Article 42. Power of attorney

The Central Authority of the requested State may require a power of attorney from the applicant only if it acts on his or her behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

Article 43. Recovery of costs

(1) Recovery of any costs incurred in the application of this Convention shall not take precedence over the recovery of maintenance.

(2) A State may recover costs from an unsuccessful party.

(3) For the purposes of an application under Article 10(1)(b) to recover costs from an unsuccessful party in accordance with paragraph (2), the term 'creditor' in Article 10(1) shall include a State.

(4) This Article shall be without prejudice to Article 8.

Article 44. Language requirements

(1) Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested State has indicated, by way of declaration in accordance with Article 63, it will accept, unless the competent authority of that State dispenses with translation.

(2) A Contracting State which has more than one official language and cannot, for reasons of internal law, accept for the whole of its territory documents in one of those languages shall, by declaration in accordance with Article 63, specify the language in which such documents or translations thereof shall be drawn up for submission in the specified parts of its territory.

(3) Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in an official language of the requested State or in either English or French. However, a Contracting State may, by making a reservation in accordance with Article 62, object to the use of either English or French.

Article 45. Means and costs of translation

(1) In the case of applications under Chapter III, the Central Authorities may agree in an individual case or generally that the translation into an official language of the requested State may be made in the requested State from the original

language or from any other agreed language. If there is no agreement and it is not possible for the requesting Central Authority to comply with the requirements of Article 44(1) and (2), then the application and related documents may be transmitted with translation into English or French for further translation into an official language of the requested State.

(2) The cost of translation arising from the application of paragraph (1) shall be borne by the requesting State unless otherwise agreed by Central Authorities of the States concerned.

(3) Notwithstanding Article 8, the requesting Central Authority may charge an applicant for the costs of translation of an application and related documents, except in so far as those costs may be covered by its system of legal assistance.

Article 46. Non-unified legal systems—interpretation

(1) In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units—

(a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;

(b) any reference to a decision established, recognised, recognised and enforced, enforced or modified in that State shall be construed as referring, where appropriate, to a decision established, recognised, recognised and enforced, enforced or modified in the relevant territorial unit;

(c) any reference to a judicial or administrative authority in that State shall be construed as referring, where appropriate, to a judicial or administrative authority in the relevant territorial unit;

(d) any reference to competent authorities, public bodies, and other bodies of that State, other than Central Authorities, shall be construed as referring, where appropriate, to those authorised to act in the relevant territorial unit;

(e) any reference to residence or habitual residence in that State shall be construed as referring, where appropriate, to residence or habitual residence in the relevant territorial unit;

(f) any reference to location of assets in that State shall be construed as referring, where appropriate, to the location of assets in the relevant territorial unit;

(g) any reference to a reciprocity arrangement in force in a State shall be construed as referring, where appropriate, to a reciprocity arrangement in force in the relevant territorial unit;

(h) any reference to free legal assistance in that State shall be construed as referring, where appropriate, to free legal assistance in the relevant territorial unit;

(i) any reference to a maintenance arrangement made in a State shall be construed as referring, where appropriate, to a maintenance arrangement made in the relevant territorial unit;

(j) any reference to recovery of costs by a State shall be construed as referring, where appropriate, to the recovery of costs by the relevant territorial unit.

(2) This Article shall not apply to a Regional Economic Integration Organisation.

Article 47. Non-unified legal systems – substantive rules

(1) A Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

(2) A competent authority in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a decision from another Contracting State solely

because the decision has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

(3) This Article shall not apply to a Regional Economic Integration Organisation.

Article 48. Co-ordination with prior Hague Maintenance Conventions

In relations between the Contracting States, this Convention replaces, subject to Article 56(2), the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children in so far as their scope of application as between such States coincides with the scope of application of this Convention.

Article 49. Co-ordination with the 1956 New York Convention

In relations between the Contracting States, this Convention replaces the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956, in so far as its scope of application as between such States coincides with the scope of application of this Convention.

Article 50. Relationship with prior Hague Conventions on service of documents and taking of evidence

This Convention does not affect the Hague Convention of 1 March 1954 on civil procedure, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

Article 51. Co-ordination of instruments and supplementary agreements

(1) This Convention does not affect any international instrument concluded before this Convention to which Contracting States are Parties and which contains provisions on matters governed by this Convention.

(2) Any Contracting State may conclude with one or more Contracting States agreements, which contain provisions on matters governed by the Convention, with a view to improving the application of the Convention between or among themselves, provided that such agreements are consistent with the objects and purpose of the Convention and do not affect, in the relationship of such States with other Contracting States, the application of the provisions of the Convention. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

(3) Paragraphs (1) and (2) shall also apply to reciprocity arrangements and to uniform laws based on special ties between the States concerned.

(4) This Convention shall not affect the application of instruments of a Regional Economic Integration Organisation that is a Party to this Convention, adopted after the conclusion of the Convention, on matters governed by the Convention provided that such instruments do not affect, in the relationship of Member States of the Regional Economic Integration Organisation with other Contracting States, the application of the provisions of the Convention. As concerns the recognition or enforcement of decisions as between Member States of the Regional Economic Integration Organisation, the Convention shall not affect the rules of the Regional Economic Integration Organisation, whether adopted before or after the conclusion of the Convention.

Article 52. Most effective rule

(1) This Convention shall not prevent the application of an agreement, arrangement or international instrument in force between the requesting State and the requested State, or a reciprocity arrangement in force in the requested State that provides for—

(a) broader bases for recognition of maintenance decisions, without prejudice to Article 22(f) of the Convention;

(b) simplified, more expeditious procedures on an application for recognition or recognition and enforcement of maintenance decisions;

(c) more beneficial legal assistance than that provided for under Articles 14 to 17; or

(d) procedures permitting an applicant from a requesting State to make a request directly to the Central Authority of the requested State.

(2) This Convention shall not prevent the application of a law in force in the requested State that provides for more effective rules as referred to in paragraph (1)(a) to (c). However, as regards simplified, more expeditious procedures referred to in paragraph (1)(b), they must be compatible with the protection offered to the parties under Articles 23 and 24, in particular as regards the rights of the parties to be duly notified of the proceedings and be given adequate opportunity to be heard and as regards the effects of any challenge or appeal.

Article 53. Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 54. Review of practical operation of the Convention

(1) The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention and to encourage the development of good practices under the Convention.

(2) For the purpose of such review, Contracting States shall co-operate with the Permanent Bureau of the Hague Conference on Private International Law in the gathering of information, including statistics and case law, concerning the practical operation of the Convention.

Article 55. Amendment of forms

(1) The forms annexed to this Convention may be amended by a decision of a Special Commission convened by the Secretary General of the Hague Conference on Private International Law to which all Contracting States and all Members shall be invited. Notice of the proposal to amend the forms shall be included in the agenda for the meeting.

(2) Amendments adopted by the Contracting States present at the Special Commission shall come into force for all Contracting States on the first day of the seventh calendar month after the date of their communication by the depositary to all Contracting States.

(3) During the period provided for in paragraph (2) any Contracting State may by notification in writing to the depositary make a reservation, in accordance with Article 62, with respect to the amendment. The State making such reservation shall, until the reservation is withdrawn, be treated as a State not Party to the present Convention with respect to that amendment.

Article 56. Transitional provisions

(1) The Convention shall apply in every case where—

(a) a request pursuant to Article 7 or an application pursuant to Chapter III has been received by the Central Authority of the requested State after the Convention has entered into force between the requesting State and the requested State;

(b) a direct request for recognition and enforcement has been received by the competent authority of the State addressed after the Convention has entered into force between the State of origin and the State addressed.

(2) With regard to the recognition and enforcement of decisions between Contracting States to this Convention that are also Parties to either of the Hague Maintenance Conventions mentioned in Article 48, if the conditions for the recog-

dition and enforcement under this Convention prevent the recognition and enforcement of a decision given in the State of origin before the entry into force of this Convention for that State, that would otherwise have been recognised and enforced under the terms of the Convention that was in effect at the time the decision was rendered, the conditions of that Convention shall apply.

(3) The State addressed shall not be bound under this Convention to enforce a decision or a maintenance arrangement, in respect of payments falling due prior to the entry into force of the Convention between the State of origin and the State addressed, except for maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

Article 57. Provision of information concerning laws, procedures and services

(1) A Contracting State, by the time its instrument of ratification or accession is deposited or a declaration is submitted in accordance with Article 61 of the Convention, shall provide the Permanent Bureau of the Hague Conference on Private International Law with—

(a) a description of its laws and procedures concerning maintenance obligations;

(b) a description of the measures it will take to meet the obligations under Article 6;

(c) a description of how it will provide applicants with effective access to procedures, as required under Article 14;

(d) a description of its enforcement rules and procedures, including any limitations on enforcement, in particular debtor protection rules and limitation periods;

(e) any specification referred to in Article 25(1)(b) and (3).

(2) Contracting States may, in fulfilling their obligations under paragraph (1), utilise a country profile form recommended and published by the Hague Conference on Private International Law.

(3) Information shall be kept up to date by the Contracting States.

CHAPTER IX – FINAL PROVISIONS

Article 58. Signature, ratification and accession

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twenty-First Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

(3) Any other State or Regional Economic Integration Organisation may accede to the Convention after it has entered into force in accordance with Article 60(1).

(4) The instrument of accession shall be deposited with the depositary.

(5) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the 12 months after the date of the notification referred to in Article 65. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59. Regional Economic Integration Organisations

(1) A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the

rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by the Convention.

(2) The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.

(3) At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare in accordance with Article 63 that it exercises competence over all the matters governed by this Convention and that the Member States which have transferred competence to the Regional Economic Integration Organisation in respect of the matter in question shall be bound by this Convention by virtue of the signature, acceptance, approval or accession of the Organisation.

(4) For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation makes a declaration in accordance with paragraph 3.

(5) Any reference to a 'Contracting State' or 'State' in this Convention shall apply equally to a Regional Economic Integration Organisation that is a Party to it, where appropriate. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph (3), any reference to a 'Contracting State' or 'State' in this Convention shall apply equally to the relevant Member States of the Organisation, where appropriate.

Article 60. Entry into force

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance or approval referred to in Article 58.

(2) Thereafter the Convention shall enter into force—

(a) for each State or Regional Economic Integration Organisation referred to in Article 59(1) subsequently ratifying, accepting or approving it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance or approval;

(b) for each State or Regional Economic Integration Organisation referred to in Article 58(3) on the day after the end of the period during which objections may be raised in accordance with Article 58(5);

(c) for a territorial unit to which the Convention has been extended in accordance with Article 61, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 61. Declarations with respect to non-unified legal systems

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare in accordance with Article 63 that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.

(4) This Article shall not apply to a Regional Economic Integration Organisation.

Article 62. Reservations

(1) Any Contracting State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 61, make one or more of the reservations provided for in Articles 2(2), 20(2), 30(8), 44(3) and 55(3). No other reservation shall be permitted.

(2) Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

(3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in paragraph (2).

(4) Reservations under this Article shall have no reciprocal effect with the exception of the reservation provided for in Article 2(2).

Article 63. Declarations

(1) Declarations referred to in Articles 2(3), 11(1)(g), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1), may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

(2) Declarations, modifications and withdrawals shall be notified to the depositary.

(3) A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

(4) A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary.

Article 64. Denunciation

(1) A Contracting State to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a multi-unit State to which the Convention applies.

(2) The denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 65. Notification

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 58 and 59 of the following—

(a) the signatures, ratifications, acceptances and approvals referred to in Articles 58 and 59;

(b) the accessions and objections raised to accessions referred to in Articles 58(3) and (5) and 59;

(c) the date on which the Convention enters into force in accordance with Article 60;

(d) the declarations referred to in Articles 2(3), 11(1)(g), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1);

(e) the agreements referred to in Article 51(2);

(f) the reservations referred to in Articles 2(2), 20(2), 30(8), 44(3) and 55(3), and the withdrawals referred to in Article 62(2);

(g) the denunciations referred to in Article 64.

**CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF
JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS**

Done at Lugano on 30 October 2007.

PREAMBLE**THE HIGH CONTRACTING PARTIES TO THIS CONVENTION**

DETERMINED to strengthen in their territories the legal protection of persons therein established,

CONSIDERING that it is necessary for this purpose to determine the international jurisdiction of the courts, to facilitate recognition, and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements,

AWARE OF the links between them, which have been sanctioned in the economic field by the free trade agreements concluded between the European Community and certain States members of the European Free Trade Association,

TAKING INTO ACCOUNT:

– the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Accession Conventions under the successive enlargements of the European Union;

– the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters, which extends the application of the rules of the 1968 Brussels Convention to certain States members of the European Free Trade Association;

– Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which has replaced the above-mentioned Brussels Convention;

– the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005;

PERSUADED that the extension of the principles laid down in Regulation (EC) No 44/2001 to the Contracting Parties to this instrument will strengthen legal and economic cooperation,

DESIRING to ensure as uniform an interpretation as possible of this instrument,

HAVE in this spirit DECIDED to conclude this Convention, and

HAVE AGREED AS FOLLOWS:

**TITLE I
SCOPE****Article 1**

1. This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Convention shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

- (c) social security;
- (d) arbitration.

3. In this Convention, the term 'State bound by this Convention' shall mean any State that is a Contracting Party to this Convention or a Member State of the European Community. It may also mean the European Community.

TITLE II JURISDICTION

Section 1 General provisions

Article 2

1. Subject to the provisions of this Convention, persons domiciled in a State bound by this Convention shall, whatever their nationality, be sued in the courts of that State.

2. Persons who are not nationals of the State bound by this Convention in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 3

1. Persons domiciled in a State bound by this Convention may be sued in the courts of another State bound by this Convention only by virtue of the rules set out in Sections 2 to 7 of this Title.

2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.

Article 4

1. If the defendant is not domiciled in a State bound by this Convention, the jurisdiction of the courts of each State bound by this Convention shall, subject to the provisions of Articles 22 and 23, be determined by the law of that State.

2. As against such a defendant, any person domiciled in a State bound by this Convention may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that State.

Section 2 Special jurisdiction

Article 5

A person domiciled in a State bound by this Convention may, in another State bound by this Convention, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

– in the case of the sale of goods, the place in a State bound by this Convention where, under the contract, the goods were delivered or should have been delivered,

– in the case of the provision of services, the place in a State bound by this Convention where, under the contract, the services were provided or should have been provided;

(c) if (b) does not apply then subparagraph (a) applies;

2. in matters relating to maintenance,

(a) in the courts for the place where the maintenance creditor is domiciled or habitually resident, or

(b) in the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to main-

tenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or

(c) in the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility, if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;

3. in matters relating to tort, *delict* or *quasi-delict*, in the courts for the place where the harmful event occurred or may occur;

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the State bound by this Convention in which the trust is domiciled;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment, or

(b) could have been so arrested, but bail or other security has been given, provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a State bound by this Convention may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the State bound by this Convention in which the property is situated.

Article 7

Where by virtue of this Convention a court of a State bound by this Convention has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

Section 3

Jurisdiction in matters relating to insurance

Article 8

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5).

Article 9

1. An insurer domiciled in a State bound by this Convention may be sued:

- (a) in the courts of the State where he is domiciled, or
 - (b) in another State bound by this Convention, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled, or
 - (c) if he is a co-insurer, in the courts of a State bound by this Convention in which proceedings are brought against the leading insurer.
2. An insurer who is not domiciled in a State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 10

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 11

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
2. Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 12

1. Without prejudice to Article 11(3), an insurer may bring proceedings only in the courts of the State bound by this Convention in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 13

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen, or
2. which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same State bound by this Convention, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
4. which is concluded with a policyholder who is not domiciled in a State bound by this Convention, except in so far as the insurance is compulsory or relates to immovable property in a State bound by this Convention, or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.

Article 14

The following are the risks referred to in Article 13(5):

1. any loss of or damage to:
 - (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;

2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage:

- (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the State bound by this Convention in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in point 1(b);
3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;
 4. any risk or interest connected with any of those referred to in points 1 to 3;
 5. notwithstanding points 1 to 4, all large risks.

Section 4

Jurisdiction over consumer contracts

Article 15

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5), if:

- (a) it is a contract for the sale of goods on instalment credit terms, or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the State bound by this Convention of the consumer's domicile or, by any means, directs such activities to that State or to several States including that State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in the State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

3. This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

1. A consumer may bring proceedings against the other party to a contract either in the courts of the State bound by this Convention in which that party is domiciled or in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the State bound by this Convention in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 17

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen, or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section, or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same State bound by this Convention, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

Section 5
Jurisdiction over individual contracts of employment

Article 18

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5).

2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 19

An employer domiciled in a State bound by this Convention may be sued:

1. in the courts of the State where he is domiciled, or
2. in another State bound by this Convention:
 - (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or
 - (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

1. An employer may bring proceedings only in the courts of the State bound by this Convention in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 21

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or
2. which allows the employee to bring proceedings in courts other than those indicated in this Section.

Section 6
Exclusive jurisdiction

Article 22

The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the State bound by this Convention in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the State bound by this Convention in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same State bound by this Convention;

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the State bound by this Convention in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

3. in proceedings which have as their object the validity of entries in public

registers, the courts of the State bound by this Convention in which the register is kept;

4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the State bound by this Convention in which the deposit or registration has been applied for, has taken place or is, under the terms of a Community instrument or an international convention, deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the grant of European patents, signed at Munich on 5 October 1973, the courts of each State bound by this Convention shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State irrespective of whether the issue is raised by way of an action or as a defence;

5. in proceedings concerned with the enforcement of judgments, the courts of the State bound by this Convention in which the judgment has been or is to be enforced.

Section 7 Prorogation of jurisdiction

Article 23

1. If the parties, one or more of whom is domiciled in a State bound by this Convention, have agreed that a court or the courts of a State bound by this Convention are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing, or
- (b) in a form which accords with practices which the parties have established between themselves, or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3. Where such an agreement is concluded by parties, none of whom is domiciled in a State bound by this Convention, the courts of other States bound by this Convention shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

4. The court or courts of a State bound by this Convention on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Article 24

Apart from jurisdiction derived from other provisions of this Convention, a court of a State bound by this Convention before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

Section 8
Examination as to jurisdiction and admissibility

Article 25

Where a court of a State bound by this Convention is seised of a claim which is principally concerned with a matter over which the courts of another State bound by this Convention have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

1. Where a defendant domiciled in one State bound by this Convention is sued in a court of another State bound by this Convention and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

3. Instead of the provisions of paragraph 2, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Convention.

4. Member States of the European Community bound by Council Regulation (EC) No 1348/2000 of 29 May 2000 or by the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, signed at Brussels on 19 October 2005, shall apply in their mutual relations the provision in Article 19 of that Regulation if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Regulation or that Agreement.

Section 9
Lis pendens – related actions

Article 27

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different States bound by this Convention, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 28

1. Where related actions are pending in the courts of different States bound by this Convention, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 29

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

For the purposes of this Section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
2. 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 plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Section 10

Provisional, including protective, measures

Article 31

Application may be made to the courts of a State bound by this Convention for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another State bound by this Convention have jurisdiction as to the substance of the matter.

TITLE III

RECOGNITION AND ENFORCEMENT

Article 32

For the purposes of this Convention, 'judgment' means any judgment given by a court or tribunal of a State bound by this Convention, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Section 1

Recognition

Article 33

1. A judgment given in a State bound by this Convention shall be recognised in the other States bound by this Convention without any special procedure being required.
2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgment be recognised.
3. If the outcome of proceedings in a court of a State bound by this Convention depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 34

A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. if it is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if it is irreconcilable with an earlier judgment given in another State bound by this Convention or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State addressed.

Article 35

1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Title II, or in a case provided for in Article 68. A judgment may furthermore be refused recognition in any case provided for in Article 64(3) or 67(4).

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.

3. Subject to the provisions of paragraph 1, the jurisdiction of the court of the State of origin may not be reviewed. The test of public policy referred to in Article 34(1) may not be applied to the rules relating to jurisdiction.

Article 36

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 37

1. A court of a State bound by this Convention in which recognition is sought of a judgment given in another State bound by this Convention may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a State bound by this Convention in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

Section 2 Enforcement

Article 38

1. A judgment given in a State bound by this Convention and enforceable in that State shall be enforced in another State bound by this Convention when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 39

1. The application shall be submitted to the court or competent authority indicated in the list in Annex II.

2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 40

1. The procedure for making the application shall be governed by the law of the State in which enforcement is sought.

2. The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

3. The documents referred to in Articles 53 shall be attached to the application.

Article 41

The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 42

1. The decision on the application for a declaration of enforceability shall forth-

with be brought to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

Article 43

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal is to be lodged with the court indicated in the list in Annex III.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the States bound by this Convention.

5. An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a State bound by this Convention other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 44

The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.

Article 45

1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

2. Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 46

1. The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

3. The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 47

1. When a judgment must be recognised in accordance with this Convention, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the State requested without a declaration of enforceability under Article 41 being required.

2. The declaration of enforceability shall carry with it the power to proceed to any protective measures.

3. During the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 48

1. Where a foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.

2. An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 49

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.

Article 50

1. An applicant who in the State of origin has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedure provided for in this Section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

2. However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark, in Iceland or in Norway in respect of maintenance may, in the State addressed, claim the benefits referred to in paragraph 1 if he presents a statement from the Danish, Icelandic, or Norwegian Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Article 51

No security, bond or deposit, however described, shall be required of a party who in one State bound by this Convention, applies for enforcement of a judgment given in another State bound by this Convention on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Article 52

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the State in which enforcement is sought.

Section 3 Common provisions

Article 53

1. A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

2. A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.

Article 54

The court or competent authority of a State bound by this Convention where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Convention.

Article 55

1. If the certificate referred to in Article 54 is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. If the court or competent authority so requires, a translation of the docu-

ments shall be produced. The translation shall be certified by a person qualified to do so in one of the States bound by this Convention.

Article 56

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 53 or Article 55(2), or in respect of a document appointing a representative *ad litem*.

TITLE IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 57

1. A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one State bound by this Convention shall, in another State bound by this Convention, be declared enforceable there, on application made in accordance with the procedures provided for in Article 38, et seq. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the State addressed.

2. Arrangements relating to maintenance obligations concluded with administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of paragraph 1.

3. The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

4. Section 3 of Title III shall apply as appropriate. The competent authority of a State bound by this Convention where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI to this Convention.

Article 58

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State bound by this Convention in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments. The court or competent authority of a State bound by this Convention where a court settlement was approved shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Convention.

TITLE V

GENERAL PROVISIONS

Article 59

1. In order to determine whether a party is domiciled in the State bound by this Convention whose courts are seised of a matter, the court shall apply its internal law.

2. If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another State bound by this Convention, the court shall apply the law of that State.

Article 60

1. For the purposes of this Convention, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat, or
- (b) central administration, or
- (c) principal place of business.

2. For the purposes of the United Kingdom and Ireland 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

3. In order to determine whether a trust is domiciled in the State bound by this Convention whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 61

Without prejudice to any more favourable provisions of national laws, persons domiciled in a State bound by this Convention who are being prosecuted in the criminal courts of another State bound by this Convention of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other States bound by this Convention.

Article 62

For the purposes of this Convention, the expression 'court' shall include any authorities designated by a State bound by this Convention as having jurisdiction in the matters falling within the scope of this Convention.

TITLE VI TRANSITIONAL PROVISIONS

Article 63

1. This Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgment or authentic instruments is sought, in the State addressed.

2. However, if the proceedings in the State of origin were instituted before the entry into force of this Convention, judgments given after that date shall be recognised and enforced in accordance with Title III:

(a) if the proceedings in the State of origin were instituted after the entry into force of the Lugano Convention of 16 September 1988 both in the State of origin and in the State addressed;

(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Title II or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

TITLE VII RELATIONSHIP TO COUNCIL REGULATION (EC) NO 44/2001 AND OTHER INSTRUMENTS

Article 64

1. This Convention shall not prejudice the application by the Member States of the European Community of the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as well as any amendments thereof, of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968, and of the Protocol on interpretation of that Convention by the Court of Justice of the European Communities, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, as well as of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005.

2. However, this Convention shall in any event be applied:

(a) in matters of jurisdiction, where the defendant is domiciled in the terri-

tory of a State where this Convention but not an instrument referred to in paragraph 1 of this Article applies, or where Articles 22 or 23 of this Convention confer jurisdiction on the courts of such a State;

(b) in relation to *lis pendens* or to related actions as provided for in Articles 27 and 28, when proceedings are instituted in a State where the Convention but not an instrument referred to in paragraph 1 of this Article applies and in a State where this Convention as well as an instrument referred to in paragraph 1 of this Article apply;

(c) in matters of recognition and enforcement, where either the State of origin or the State addressed is not applying an instrument referred to in paragraph 1 of this Article.

3. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the ground of jurisdiction on which the judgment has been based differs from that resulting from this Convention and recognition or enforcement is sought against a party who is domiciled in a State where this Convention but not an instrument referred to in paragraph 1 of this Article applies, unless the judgment may otherwise be recognised or enforced under any rule of law in the State addressed.

Article 65

Subject to the provisions of Articles 63(2), 66 and 67, this Convention shall, as between the States bound by this Convention, supersede the conventions concluded between two or more of them that cover the same matters as those to which this Convention applies. In particular, the conventions mentioned in Annex VII shall be superseded.

Article 66

1. The conventions referred to in Article 65 shall continue to have effect in relation to matters to which this Convention does not apply.

2. They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Article 67

1. This Convention shall not affect any conventions by which the Contracting Parties and/or the States bound by this Convention are bound and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments. Without prejudice to obligations resulting from other agreements between certain Contracting Parties, this Convention shall not prevent Contracting Parties from entering into such conventions.

2. This Convention shall not prevent a court of a State bound by this Convention and by a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another State bound by this Convention which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Convention.

3. Judgments given in a State bound by this Convention by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other States bound by this Convention in accordance with Title III of this Convention.

4. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the State addressed is not bound by the convention on a particular matter and the person against whom recognition or enforcement is sought is domiciled in that State, or, if the State addressed is a Member State of the European Community and in respect of conventions which would have to be concluded by the European Community, in any of its Member States, unless the judg-

ment may otherwise be recognised or enforced under any rule of law in the State addressed.

5. Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedures for recognition and enforcement of judgments may be applied.

Article 68

1. This Convention shall not affect agreements by which States bound by this Convention undertook, prior to the entry into force of this Convention, not to recognise judgments given in other States bound by this Convention against defendants domiciled or habitually resident in a third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction as specified in Article 3(2). Without prejudice to obligations resulting from other agreements between certain Contracting Parties, this Convention shall not prevent Contracting Parties from entering into such conventions.

2. However, a Contracting Party may not assume an obligation towards a third State not to recognise a judgment given in another State bound by this Convention by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

(a) if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or

(b) if the property constitutes the security for a debt which is the subject-matter of the action.

TITLE VIII FINAL PROVISIONS

Article 69

1. This Convention shall be open for signature by the European Community, Denmark, and States which, at the time of the opening for signature, are Members of the European Free Trade Association.

2. The Convention shall be subject to ratification by the Signatories. The instruments of ratification shall be deposited with the Swiss Federal Council, which shall act as Depositary of this Convention.

3. At the time of the ratification, the Contracting Parties may submit declarations in accordance with Articles I, II and III of Protocol 1.

4. The Convention shall enter into force on the first day of the sixth month following the date on which the European Community and a Member of the European Free Trade Association deposit their instruments of ratification.

5. The Convention shall enter into force in relation to any other Party on the first day of the third month following the deposit of its instrument of ratification.

6. Without prejudice to Article 3(3) of Protocol 2, this Convention shall replace the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988 as of the date of its entry into force in accordance with paragraphs 4 and 5 above. Any reference to the 1988 Lugano Convention in other instruments shall be understood as a reference to this Convention.

7. Insofar as the relations between the Member States of the European Community and the non-European territories referred to in Article 70(1)(b) are concerned, the Convention shall replace the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on

27 September 1968, and of the Protocol on interpretation of that Convention by the Court of Justice of the European Communities, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, as of the date of the entry into force of this Convention with respect to these territories in accordance with Article 73(2).

Article 70

1. After entering into force this Convention shall be open for accession by:
 - (a) the States which, after the opening of this Convention for signature, become Members of the European Free Trade Association, under the conditions laid down in Article 71;
 - (b) Member States of the European Community acting on behalf of certain non-European territories that are part of the territory of that Member State or for whose external relations that Member State is responsible, under the conditions laid down in Article 71;
 - (c) any other State, under the conditions laid down in Article 72.
2. States referred to in paragraph 1, which wish to become a Contracting Party to this Convention, shall address their application to the Depositary. The application, including the information referred to in Articles 71 and 72 shall be accompanied by a translation into English and French.

Article 71

1. Any State referred to in Article 70(1)(a) and (b) wishing to become a Contracting Party to this Convention
 - (a) shall communicate the information required for the application of this Convention;
 - (b) may submit declarations in accordance with Articles I and III of Protocol 1.
2. The Depositary shall transmit any information received pursuant to paragraph 1 to the other Contracting Parties prior to the deposit of the instrument of accession by the State concerned.

Article 72

1. Any State referred to in Article 70(1)(c) wishing to become a Contracting Party to this Convention:
 - (a) shall communicate the information required for the application of this Convention;
 - (b) may submit declarations in accordance with Articles I and III of Protocol 1; and
 - (c) shall provide the Depositary with information on, in particular:
 - (1) their judicial system, including information on the appointment and independence of judges;
 - (2) their internal law concerning civil procedure and enforcement of judgments; and
 - (3) their private international law relating to civil procedure.
2. The Depositary shall transmit any information received pursuant to paragraph 1 to the other Contracting Parties prior to inviting the State concerned to accede in accordance with paragraph 3 of this Article.
3. Without prejudice to paragraph 4, the Depositary shall invite the State concerned to accede only if it has obtained the unanimous agreement of the Contracting Parties. The Contracting Parties shall endeavour to give their consent at the latest within one year after the invitation by the Depositary.
4. The Convention shall enter into force only in relations between the acceding State and the Contracting Parties which have not made any objections to the acces-

sion before the first day of the third month following the deposit of the instrument of accession.

Article 73

1. The instruments of accession shall be deposited with the Depository.
2. In respect of an acceding State referred to in Article 70, the Convention shall enter into force on the first day of the third month following the deposit of its instrument of accession. As of that moment, the acceding State shall be considered a Contracting Party to the Convention.
3. Any Contracting Party may submit to the Depository a text of this Convention in the language or languages of the Contracting Party concerned, which shall be authentic if so agreed by the Contracting Parties in accordance with Article 4 of Protocol 2.

Article 74

1. This Convention is concluded for an unlimited period.
2. Any Contracting Party may, at any time, denounce the Convention by sending a notification to the Depository.
3. The denunciation shall take effect at the end of the calendar year following the expiry of a period of six months from the date of receipt by the Depository of the notification of denunciation.

Article 75

The following are annexed to this Convention:

- a Protocol 1, on certain questions of jurisdiction, procedure and enforcement;
- a Protocol 2, on the uniform interpretation of this Convention and on the Standing Committee;
- a Protocol 3, on the application of Article 67 of this Convention;
- Annexes I through IV and Annex VII, with information related to the application of this Convention;
- Annexes V and VI, containing the certificates referred to in Articles 54, 58 and 57 of this Convention;
- Annex VIII, containing the authentic languages referred to in Article 79 of this Convention; and
- Annex IX, concerning the application of Article II of Protocol 1.

These Protocols and Annexes shall form an integral part of this Convention.

Article 76

Without prejudice to Article 77, any Contracting Party may request the revision of this Convention. To that end, the Depository shall convene the Standing Committee as laid down in Article 4 of Protocol 2.

Article 77

1. The Contracting Parties shall communicate to the Depository the text of any provisions of the laws which amend the lists set out in Annexes I through IV as well as any deletions in or additions to the list set out in Annex VII and the date of their entry into force. Such communication shall be made within reasonable time before the entry into force and be accompanied by a translation into English and French. The Depository shall adapt the Annexes concerned accordingly, after having consulted the Standing Committee in accordance with Article 4 of Protocol 2. For that purpose, the Contracting Parties shall provide a translation of the adaptations into their languages.
2. Any amendment of the Annexes V through VI and VIII through IX to this Convention shall be adopted by the Standing Committee in accordance with Article 4 of Protocol 2.

Article 78

1. The Depositary shall notify the Contracting Parties of:
 - (a) the deposit of each instrument of ratification or accession;
 - (b) the dates of entry into force of this Convention in respect of the Contracting Parties;
 - (c) any declaration received pursuant to Articles I to IV of Protocol 1;
 - (d) any communication made pursuant to Article 74(2), Article 77(1) and paragraph 4 of Protocol 3.
2. The notifications will be accompanied by translations into English and French.

Article 79

This Convention, drawn up in a single original in the languages listed in Annex VIII, all texts being equally authentic, shall be deposited in the Swiss Federal Archives. The Swiss Federal Council shall transmit a certified copy to each Contracting Party.

...

ANNEX I

The rules of jurisdiction referred to in Article 3(2) and 4(2) of the Convention are the following:

...

- in the United Kingdom: the rules which enable jurisdiction to be founded on:
 - (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom, or
 - (b) the presence within the United Kingdom of property belonging to the defendant, or
 - (c) the seizure by the plaintiff of property situated in the United Kingdom.

ANNEX II

The courts or competent authorities to which the application referred to in Article 39 of the Convention may be submitted are the following:

- in the United Kingdom:

...

- (b) in Scotland, the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State.

...

ANNEX III

The courts with which appeals referred to in Article 43(2) of the Convention may be lodged are the following:

- in the United Kingdom:

...

- (b) in Scotland, the Court of Session, or in the case of a maintenance judgment the Sheriff Court.

...

ANNEX IV

The appeals which may be lodged pursuant to Article 44 of the Convention are the following:

...

- in the United Kingdom: a single further appeal on a point of law.

**CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF
FOREIGN JUDGMENTS IN CIVIL OR COMMERCIAL MATTERS***

(Concluded 2 July 2019)

The Contracting Parties to the present Convention,

Desiring to promote effective access to justice for all and to facilitate rule-based multilateral trade and investment, and mobility, through judicial co-operation,

Believing that such co-operation can be enhanced through the creation of a uniform set of core rules on recognition and enforcement of foreign judgments in civil or commercial matters, to facilitate the effective recognition and enforcement of such judgments,

Convinced that such enhanced judicial co-operation requires, in particular, an international legal regime that provides greater predictability and certainty in relation to the global circulation of foreign judgments, and that is complementary to the Convention of 30 June 2005 on Choice of Court Agreements,

Have resolved to conclude this Convention to this effect and have agreed upon the following provisions –

CHAPTER I – SCOPE AND DEFINITIONS**Article 1 – Scope**

1. This Convention shall apply to the recognition and enforcement of judgments in civil or commercial matters. It shall not extend in particular to revenue, customs or administrative matters.

2. This Convention shall apply to the recognition and enforcement in one Contracting State of a judgment given by a court of another Contracting State.

Article 2 – Exclusions from scope

1. This Convention shall not apply to the following matters –

- (a) the status and legal capacity of natural persons;
- (b) maintenance obligations;
- (c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
- (d) wills and succession;
- (e) insolvency, composition, resolution of financial institutions, and analogous matters;
- (f) the carriage of passengers and goods;
- (g) transboundary marine pollution, marine pollution in areas beyond national jurisdiction, ship-source marine pollution, limitation of liability for maritime claims, and general average;
- (h) liability for nuclear damage;
- (i) the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;
- (j) the validity of entries in public registers;
- (k) defamation;
- (l) privacy;
- (m) intellectual property;
- (n) activities of armed forces, including the activities of their personnel in the exercise of their official duties;
- (o) law enforcement activities, including the activities of law enforcement personnel in the exercise of their official duties;
- (p) anti-trust (competition) matters, except where the judgment is based on

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conduct that constitutes an anti-competitive agreement or concerted practice among actual or potential competitors to fix prices, make rigged bids, establish output restrictions or quotas, or divide markets by allocating customers, suppliers, territories or lines of commerce, and where such conduct and its effect both occurred in the State of origin;

(q) sovereign debt restructuring through unilateral State measures.

2. A judgment is not excluded from the scope of this Convention where a matter to which this Convention does not apply arose merely as a preliminary question in the proceedings in which the judgment was given, and not as an object of the proceedings. In particular, the mere fact that such a matter arose by way of defence does not exclude a judgment from the Convention, if that matter was not an object of the proceedings.

3. This Convention shall not apply to arbitration and related proceedings.

4. A judgment is not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, was a party to the proceedings.

5. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

Article 3 – Definitions

1. In this Convention –

(a) ‘defendant’ means a person against whom the claim or counterclaim was brought in the State of origin;

(b) ‘judgment’ means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses of the proceedings by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.

2. An entity or person other than a natural person shall be considered to be habitually resident in the State –

(a) where it has its statutory seat;

(b) under the law of which it was incorporated or formed;

(c) where it has its central administration; or

(d) where it has its principal place of business.

CHAPTER II – RECOGNITION AND ENFORCEMENT

Article 4 – General provisions

1. A judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) in accordance with the provisions of this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.

2. There shall be no review of the merits of the judgment in the requested State. There may only be such consideration as is necessary for the application of this Convention.

3. A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

4. Recognition or enforcement may be postponed or refused if the judgment referred to under paragraph 3 is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

Article 5 – Bases for recognition and enforcement

1. A judgment is eligible for recognition and enforcement if one of the following requirements is met –

(a) the person against whom recognition or enforcement is sought was habi-

tually resident in the State of origin at the time that person became a party to the proceedings in the court of origin;

(b) the natural person against whom recognition or enforcement is sought had their principal place of business in the State of origin at the time that person became a party to the proceedings in the court of origin and the claim on which the judgment is based arose out of the activities of that business;

(c) the person against whom recognition or enforcement is sought is the person that brought the claim, other than a counterclaim, on which the judgment is based;

(d) the defendant maintained a branch, agency, or other establishment without separate legal personality in the State of origin at the time that person became a party to the proceedings in the court of origin, and the claim on which the judgment is based arose out of the activities of that branch, agency, or establishment;

(e) the defendant expressly consented to the jurisdiction of the court of origin in the course of the proceedings in which the judgment was given;

(f) the defendant argued on the merits before the court of origin without contesting jurisdiction within the timeframe provided in the law of the State of origin, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law;

(g) the judgment ruled on a contractual obligation and it was given by a court of the State in which performance of that obligation took place, or should have taken place, in accordance with

(i) the agreement of the parties, or

(ii) the law applicable to the contract, in the absence of an agreed place of performance,

unless the activities of the defendant in relation to the transaction clearly did not constitute a purposeful and substantial connection to that State;

(h) the judgment ruled on a lease of immovable property (tenancy) and it was given by a court of the State in which the property is situated;

(i) the judgment ruled against the defendant on a contractual obligation secured by a right in rem in immovable property located in the State of origin, if the contractual claim was brought together with a claim against the same defendant relating to that right in rem;

(j) the judgment ruled on a non-contractual obligation arising from death, physical injury, damage to or loss of tangible property, and the act or omission directly causing such harm occurred in the State of origin, irrespective of where that harm occurred;

(k) the judgment concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and –

(i) at the time the proceedings were instituted, the State of origin was designated in the trust instrument as a State in the courts of which disputes about such matters are to be determined; or

(ii) at the time the proceedings were instituted, the State of origin was expressly or impliedly designated in the trust instrument as the State in which the principal place of administration of the trust is situated.

This sub-paragraph only applies to judgments regarding internal aspects of a trust between persons who are or were within the trust relationship;

(l) the judgment ruled on a counterclaim –

(i) to the extent that it was in favour of the counterclaimant, provided that the counterclaim arose out of the same transaction or occurrence as the claim; or

(ii) to the extent that it was against the counterclaimant, unless the law of the State of origin required the counterclaim to be filed in order to avoid preclusion;

(m) the judgment was given by a court designated in an agreement con-

cluded or documented in writing or by any other means of communication which renders information accessible so as to be usable for subsequent reference, other than an exclusive choice of court agreement.

For the purposes of this sub-paragraph, an 'exclusive choice of court agreement' means an agreement concluded by two or more parties that designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one State or one or more specific courts of one State to the exclusion of the jurisdiction of any other courts.

2. If recognition or enforcement is sought against a natural person acting primarily for personal, family or household purposes (a consumer) in matters relating to a consumer contract, or against an employee in matters relating to the employee's contract of employment –

(a) paragraph 1(e) applies only if the consent was addressed to the court, orally or in writing;

(b) paragraph 1(f), (g) and (m) do not apply.

3. Paragraph 1 does not apply to a judgment that ruled on a residential lease of immovable property (tenancy) or ruled on the registration of immovable property. Such a judgment is eligible for recognition and enforcement only if it was given by a court of the State where the property is situated.

Article 6 – Exclusive basis for recognition and enforcement

Notwithstanding Article 5, a judgment that ruled on rights in rem in immovable property shall be recognised and enforced if and only if the property is situated in the State of origin.

Article 7 – Refusal of recognition and enforcement

1. Recognition or enforcement may be refused if –

(a) the document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim –

(i) was not notified to the defendant in sufficient time and in such a way as to enable them to arrange for their defence, unless the defendant entered an appearance and presented their case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or

(ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;

(b) the judgment was obtained by fraud;

(c) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State and situations involving infringements of security or sovereignty of that State;

(d) the proceedings in the court of origin were contrary to an agreement, or a designation in a trust instrument, under which the dispute in question was to be determined in a court of a State other than the State of origin;

(e) the judgment is inconsistent with a judgment given by a court of the requested State in a dispute between the same parties; or

(f) the judgment is inconsistent with an earlier judgment given by a court of another State between the same parties on the same subject matter, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

2. Recognition or enforcement may be postponed or refused if proceedings between the same parties on the same subject matter are pending before a court of the requested State, where –

(a) the court of the requested State was seised before the court of origin; and

(b) there is a close connection between the dispute and the requested State.

A refusal under this paragraph does not prevent a subsequent application for recognition or enforcement of the judgment.

Article 8 – Preliminary questions

1. A ruling on a preliminary question shall not be recognised or enforced under this Convention if the ruling is on a matter to which this Convention does not apply or on a matter referred to in Article 6 on which a court of a State other than the State referred to in that Article ruled.

2. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter to which this Convention does not apply, or on a matter referred to in Article 6 on which a court of a State other than the State referred to in that Article ruled.

Article 9 – Severability

Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention.

Article 10 – Damages

1. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.

2. The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

Article 11 – Judicial settlements (transactions judiciaires)

Judicial settlements (transactions judiciaires) which a court of a Contracting State has approved, or which have been concluded in the course of proceedings before a court of a Contracting State, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment.

Article 12 – Documents to be produced

1. The party seeking recognition or applying for enforcement shall produce –

(a) a complete and certified copy of the judgment;

(b) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party;

(c) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;

(d) in the case referred to in Article 11, a certificate of a court (including an officer of the court) of the State of origin stating that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin.

2. If the terms of the judgment do not permit the court addressed to verify whether the conditions of this Chapter have been complied with, that court may require any necessary documents.

3. An application for recognition or enforcement may be accompanied by a document relating to the judgment, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law.

4. If the documents referred to in this Article are not in an official language of the requested State, they shall be accompanied by a certified translation into an official language, unless the law of the requested State provides otherwise.

Article 13 – Procedure

1. The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of

the requested State unless this Convention provides otherwise. The court of the requested State shall act expeditiously.

2. The court of the requested State shall not refuse the recognition or enforcement of a judgment under this Convention on the ground that recognition or enforcement should be sought in another State.

Article 14 – Costs of proceedings

1. No security, bond or deposit, however described, shall be required from a party who in one Contracting State applies for enforcement of a judgment given by a court of another Contracting State on the sole ground that such party is a foreign national or is not domiciled or resident in the State in which enforcement is sought.

2. An order for payment of costs or expenses of proceedings, made in a Contracting State against any person exempt from requirements as to security, bond, or deposit by virtue of paragraph 1 or of the law of the State where proceedings have been instituted, shall, on the application of the person entitled to the benefit of the order, be rendered enforceable in any other Contracting State.

3. A State may declare that it shall not apply paragraph 1 or designate by a declaration which of its courts shall not apply paragraph 1.

Article 15 – Recognition and enforcement under national law

Subject to Article 6, this Convention does not prevent the recognition or enforcement of judgments under national law.

CHAPTER III – GENERAL CLAUSES

Article 16 – Transitional provision

This Convention shall apply to the recognition and enforcement of judgments if, at the time the proceedings were instituted in the State of origin, the Convention had effect between that State and the requested State.

Article 17 – Declarations limiting recognition and enforcement

A State may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State, and the relationship of the parties and all other elements relevant to the dispute, other than the location of the court of origin, were connected only with the requested State.

Article 18 – Declarations with respect to specific matters

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.

2. With regard to that matter, the Convention shall not apply –

- (a) in the Contracting State that made the declaration;
- (b) in other Contracting States, where recognition or enforcement of a judgment given by a court of a Contracting State that made the declaration is sought.

Article 19 – Declarations with respect to judgments pertaining to a State

1. A State may declare that it shall not apply this Convention to judgments arising from proceedings to which any of the following is a party –

- (a) that State, or a natural person acting for that State; or
- (b) a government agency of that State, or a natural person acting for such a government agency.

The State making such a declaration shall ensure that the declaration is no broader than necessary and that the exclusion from scope is clearly and precisely defined. The declaration shall not distinguish between judgments where the State, a gov-

ernment agency of that State or a natural person acting for either of them is a defendant or claimant in the proceedings before the court of origin.

2. Recognition or enforcement of a judgment given by a court of a State that made a declaration pursuant to paragraph 1 may be refused if the judgment arose from proceedings to which either the State that made the declaration or the requested State, one of their government agencies or a natural person acting for either of them is a party, to the same extent as specified in the declaration.

Article 20 – Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 21 – Review of operation of the Convention

The Secretary General of the Hague Conference on Private International Law shall at regular intervals make arrangements for review of the operation of this Convention, including any declarations, and shall report to the Council on General Affairs and Policy.

Article 22 – Non-unified legal systems

1. In relation to a Contracting State in which two or more systems of law apply in different territorial units with regard to any matter dealt with in this Convention –

(a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;

(b) any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit;

(c) any reference to a connection with a State shall be construed as referring, where appropriate, to a connection with the relevant territorial unit;

(d) any reference to a connecting factor in relation to a State shall be construed as referring, where appropriate, to that connecting factor in relation to the relevant territorial unit.

2. Notwithstanding paragraph 1, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

3. A court in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a judgment from another Contracting State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

4. This Article shall not apply to Regional Economic Integration Organisations.

Article 23 – Relationship with other international instruments

1. This Convention shall be interpreted so far as possible to be compatible with other treaties in force for Contracting States, whether concluded before or after this Convention.

2. This Convention shall not affect the application by a Contracting State of a treaty that was concluded before this Convention.

3. This Convention shall not affect the application by a Contracting State of a treaty concluded after this Convention as concerns the recognition or enforcement of a judgment given by a court of a Contracting State that is also a Party to that treaty. Nothing in the other treaty shall affect the obligations under Article 6 towards Contracting States that are not Parties to that treaty.

4. This Convention shall not affect the application of the rules of a Regional Economic Integration Organisation that is a Party to this Convention as concerns the recognition or enforcement of a judgment given by a court of a Contracting State that is also a Member State of the Regional Economic Integration Organisation where –

- (a) the rules were adopted before this Convention was concluded; or
- (b) the rules were adopted after this Convention was concluded, to the extent that they do not affect the obligations under Article 6 towards Contracting States that are not Member States of the Regional Economic Integration Organisation.

CHAPTER IV – FINAL CLAUSES

Article 24 – Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention shall be open for accession by all States.
4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 25 – Declarations with respect to non-unified legal systems

1. If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may declare that the Convention shall extend to all its territorial units or only to one or more of them. Such a declaration shall state expressly the territorial units to which the Convention applies.
2. If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.
3. This Article shall not apply to Regional Economic Integration Organisations.

Article 26 – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.
3. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation declares in accordance with Article 27(1) that its Member States will not be Parties to this Convention.
4. Any reference to a 'Contracting State' or 'State' in this Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation.

Article 27 – Regional Economic Integration Organisation as a Contracting Party without its Member States

1. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it exercises competence over all the matters governed by this Convention and that its Member States will not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation.
2. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a 'Contracting State' or 'State' in this Convention shall apply equally, where appropriate, to the Member States of the Organisation.

Article 28 – Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of the period during which a notification may be made in accordance with Article 29(2) with respect to the second State that has deposited its instrument of ratification, acceptance, approval or accession referred to in Article 24.

2. Thereafter this Convention shall enter into force –

(a) for each State subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of the period during which notifications may be made in accordance with Article 29(2) with respect to that State;

(b) for a territorial unit to which this Convention has been extended in accordance with Article 25 after the Convention has entered into force for the State making the declaration, on the first day of the month following the expiration of three months after the notification of the declaration referred to in that Article.

Article 29 – Establishment of relations pursuant to the Convention

1. This Convention shall have effect between two Contracting States only if neither of them has notified the depositary regarding the other in accordance with paragraph 2 or 3. In the absence of such a notification, the Convention has effect between two Contracting States from the first day of the month following the expiration of the period during which notifications may be made.

2. A Contracting State may notify the depositary, within 12 months after the date of the notification by the depositary referred to in Article 32(a), that the ratification, acceptance, approval or accession of another State shall not have the effect of establishing relations between the two States pursuant to this Convention.

3. A State may notify the depositary, upon the deposit of its instrument pursuant to Article 24(4), that its ratification, acceptance, approval or accession shall not have the effect of establishing relations with a Contracting State pursuant to this Convention.

4. A Contracting State may at any time withdraw a notification that it has made under paragraph 2 or 3. Such a withdrawal shall take effect on the first day of the month following the expiration of three months following the date of notification.

Article 30 – Declarations

1. Declarations referred to in Articles 14, 17, 18, 19 and 25 may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

2. Declarations, modifications and withdrawals shall be notified to the depositary.

3. A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

4. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months following the date on which the notification is received by the depositary.

5. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall not apply to judgments resulting from proceedings that have already been instituted before the court of origin when the declaration takes effect.

Article 31 – Denunciation

1. A Contracting State to this Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect on the first day of the month following the

expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 32 – Notifications by the depositary

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded to this Convention in accordance with Articles 24, 26 and 27 of the following –

- (a) the signatures, ratifications, acceptances, approvals and accessions referred to in Articles 24, 26 and 27;
- (b) the date on which this Convention enters into force in accordance with Article 28;
- (c) the notifications, declarations, modifications and withdrawals referred to in Articles 26, 27, 29 and 30; and
- (d) the denunciations referred to in Article 31.

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