

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,456 of 17 February, 2005



I ASSENT,

DAVID BLUNT,

ACTING GOVERNOR.

9th February, 2005.



GIBRALTAR

No. 7 of 2005

AN ACT to make provision in respect of EC Regulation (EC) 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 1347/2000, to make further provision in respect of EC Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and to amend the Civil Jurisdiction and Judgments Act 1993.

ENACTED by the Legislature of Gibraltar.

Part I General

Title

1. This Act may be cited as the Civil Jurisdiction and Judgments (Amendment) Act 2005 and comes into operation as follows—

- (a) section 2(h) and 2(k) come into operation on 1 March 2005; and
- (b) all other sections and schedules come into operation on the date of publication.

Amendments to Civil Jurisdiction and Judgments Act 1993.

2. The Civil Jurisdiction and Judgments Act 1993 is amended as follows—

- (a) in section 2(1), after “the Regulation”, inserting the following—

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

- (b) section 2 (5) is amended by inserting—

- (i) after “court of law” the following—

““declared enforceable” means that a court has made an enforcement order;”;

- (ii) after “enactment” the following—

““enforcement order” means an order that a judgment (including a maintenance order) may be enforced in Gibraltar;”.

- (c) section 6 is substituted by the following—

“Enforcement of judgments other than maintenance orders.

- 6.(1) The court to which an application is made under Article 32 shall be the Supreme Court and the Supreme Court may, on an

application made under Article 31, make an enforcement order.

- (2) Where an enforcement order is made under this section, the reasonable costs or expenses of and incidental to the order shall be recoverable as if they were sums recoverable under the judgment which has been declared enforceable.
- (3) Where a judgment has been declared enforceable under this section—
 - (a) it shall be of the same force and effect, as if it had been originally made by the Supreme Court; and
 - (b) may be enforced in the same way as if it had been originally made by the Supreme Court.
- (4) Sub-section (3) is subject to—
 - (a) article 39 (restriction on enforcement where appeal pending or time for appeal unexpired);
 - (b) section 9; and
 - (c) any provision made by rules of court as to the manner in which and conditions subject to which a judgment declared enforceable under this section may be enforced.”;

(d) section 7 is substituted by the following—

“Recognition and enforcement of maintenance orders.

- 7.(1) The function of transmitting an application under Article 31 for the recognition or enforcement in Gibraltar of a maintenance order to the appropriate court shall be discharged in Gibraltar by the Attorney General and in this sub-section “the appropriate court” means the Magistrates’ Court.
- (2) Such an application shall be determined by the Magistrates’ Court. The Magistrates’ Court may make an enforcement order in respect of a maintenance order.

- (3) Where a maintenance order has been declared enforceable under this section—
 - (a) it shall be of the same force and effect as if it had originally been made by the Magistrates’ Court; and
 - (b) may be enforced in the same way as if the order had been originally made by the Magistrates’ Court.
 - (4) Sub-section (3) is subject to—
 - (a) Article 39 (restriction and enforcement where appeal pending or time for appeal unexpired);
 - (b) section 9; and
 - (c) to any provision made by rules of court as to the manner in which, and the conditions subject to which, an order declared enforceable under this section may be enforced.
 - (5) The payer under a maintenance order declared enforceable under this section shall give notice of any change of address to the clerk of the Magistrates’ Court.
 - (6) A person who, without reasonable excuse, fails to comply with subsection (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.”;
- (e) section 9 is amended—
- (i) in subsection (1) by substituting for “application for registration of a judgment”, “application for an enforcement order in respect of a judgment (including a maintenance order)”;
 - (ii) in subsection (1) in the paragraph after paragraph (b) by substituting—
 - (aa) for “registered”, “declared enforceable”;

(bb) for “registration”, “enforcement order in respect”; and

(cc) for “the registered particulars”, “that enforcement order”;

(iii) in subsection (3) by substituting for “registering court on the date of registration”, “court making the enforcement order on the date of that order”;

(iv) in subsection (4) by substituting for “registered”, “declared enforceable”;

(v) in subsection (5) by substituting for “registered”, “declared enforceable”;

(f) section 10 is amended—

(i) in subsection (1) by substituting for “of its registration”, “of an enforcement order made”;

(ii) in subsection (2) by substituting for “date of registration of the order”, “date the order was declared enforceable”;

(g) section 32 is amended—

(i) in subsection (1), by substituting for “or the Regulation”, “, the Regulation or Regulation 2201/2003”;

(ii) in subsection (2), by substituting for “registered in any court”, “declared enforceable by any court”;

(h) the following is inserted after section 38—

“Application of Regulation 2201/2003 – jurisdiction and the recognition and enforcement of judgments in matrimonial and parental responsibility matters.

38A. Schedule 11 shall have effect.”;

(i) section 39(1) is replaced by the following—

“(1) Gibraltar and the United Kingdom shall be treated as if each were a separate Regulation State for all purposes connected to the operation of–

- (a) the Regulation;
- (b) Regulation 2201/2003.”;

(j) Schedule 10 is amended by substituting for paragraphs 1 to 6 the following–

“Interpretation.

1.(1) In this Schedule–

"court", without more, includes a tribunal;

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

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

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

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

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

(3) References in paragraphs 2 to 8 to a judgment declared_enforceable under the Regulation include, where an enforcement order is granted only to a limited extent, references to a judgment declared enforceable only to that limited extent.

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

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

(2) A judgment declared enforceable under the Regulation shall, for the purposes of its enforcement, be of the same force and effect, and 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 court which made the enforcement order and had (where relevant) been entered.

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

Recognition and enforcement of maintenance orders (section 7).

3.(1) A maintenance order declared enforceable under the Regulation shall, for the purposes of its enforcement, be of the same force and effect, and the court which made the enforcement order shall have in relation to its enforcement the same powers, and proceedings for or with respect to its enforcement may be taken, as if the order had been originally made by the court which made the enforcement order.

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

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

(4) The payer under a maintenance order declared enforceable under the Regulation in the magistrates' court shall give notice of any changes of address to the Clerk to the Justices. A person who without reasonable excuse fails to comply with this sub-paragraph shall be guilty of an offence

and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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

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

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

Interest on registered judgments (section 9).

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

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

the rate of interest and the date or time from which it is so recoverable shall be declared enforceable with the judgment and, subject to rules of court, the debt resulting, apart from paragraph 2(1), from the enforcement order in respect of the judgment shall carry interest in accordance with that enforcement order.

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

(3) Interest on arrears of sums payable under a maintenance order declared enforceable under the Regulation in the Magistrates' Court shall be recoverable in that court in accordance with paragraphs (1) and (2).

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

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

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

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

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

(k) inserting after schedule 10–

“SCHEDULE 11

Section 38A

**APPLICATION OF REGULATION 2201/2003
Jurisdiction and the recognition and enforcement of judgments in
matrimonial and parental responsibility matters.**

Interpretation

1. In this Schedule words defined in Regulation 2201/2003 have the same meanings.

Recognition and enforcement of judgments

1. The Supreme Court—

- (a) may, for the purposes of Chapter III of Regulation 2201/2003, make an order that a judgment of a court in a regulation state is recognised, or not recognised, in Gibraltar;
- (b) may, for the purposes of Article 28(1) of Regulation 2201/2003, make an order declaring that a judgment on the exercise of parental responsibility of a court in a regulation state is enforceable in Gibraltar;
- (c) shall be the competent court for the purpose of Article 39 of Regulation 2201/2003.

2. Where a judgment has been recognised or declared enforceable under subsection (1)(a) or (1)(b) any court in Gibraltar shall have the same powers for the purpose of enforcing the judgment as if the judgment had been made by the Supreme Court and, subject to Regulation 2201/2003, proceedings for or with respect to enforcement may be taken accordingly.

3. For the purpose of Article 37(1)(a) of Regulation 2201/2003 a copy of a judgment shall be considered authentic unless the contrary is shown.

4. The Chief Justice may make rules of court to give effect to this Schedule, in particular in relation to the form and manner in which judgments may be recognised, and applications under Regulation 2201/2003 are made.”.

Passed by the Gibraltar House of Assembly on the 24th day of January,
2005.

D. J. REYES,

Clerk to the Assembly.

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