



BRIEFING PAPER

Number 08671, 9 October 2019

Getting divorced if there is a no-deal Brexit

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Summary

This briefing paper considers how getting divorced might be affected by a no-deal Brexit and deals with the position in England and Wales except where stated otherwise. It does not deal with related family law matters relating to children and the payment of maintenance.

The substantive law of divorce sets out such matters as the grounds for divorce and how the assets and income of the divorcing couple might be divided. This is governed by national law and is unlikely to be affected by Brexit. However, Brexit might have an impact on the rules affecting procedural matters such as where a divorce takes place and which country's law applies, particularly in cases involving divorcing spouses from separate EU Member States.

Civil judicial co-operation

Civil judicial co-operation in family law is the legal framework that governs the interaction between different legal systems in cross-border situations, including divorce. In order to provide certainty and to avoid litigation in the courts of more than one country on the same dispute, a set of rules sets out:

- which country's law applies;
- which country's courts have jurisdiction to hear the case; and
- the recognition and enforcement in one country of a judgment obtained in another country.

Current rules

At present, two directly applicable EU Regulations deal with civil judicial co-operation in family matters: Brussels IIa which provides rules relating to (among other things) jurisdiction in proceedings for matrimonial matters of divorce, legal separation and annulment of marriage, and for recognition and enforcement of one Member State's judgments relating to these matters in other Member States; and the Maintenance Regulation. Both regulations deal with procedural matters rather than substantive law.

Currently, divorce jurisdiction in England and Wales for all cases – whether or not there is an international dimension - is primarily based on Brussels IIa rules.

When divorce and/or financial provision proceedings are started both in England and Wales and in a country which is not an EU Member State, the court in England and Wales decides which country's court should deal with the divorce - based on where the family has the closest connection. This issue can itself sometimes involve expensive and time-consuming litigation.

The 1970 Hague Convention on the Recognition of Divorces and Legal Separations provides rules for the recognition of divorces and legal separations.

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If the UK leaves the EU without an agreement relating to these matters, Brussels IIa and the Maintenance Regulation would no longer operate reciprocally. EU Member States would not be obliged to apply these rules to cases involving the UK, nor would they be required under the regulations to enforce or recognise decisions of the courts in the UK.

The [Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019](#) were made on 6 March 2019 as part of the Government's preparations for a no-deal Brexit. They will come into force on exit day. In short, these regulations revoke Brussels IIa for

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England and Wales and Northern Ireland and revoke the Maintenance Regulation for the UK, except in relation to proceedings or applications which have already started before exit day. The relevant matters are to be governed instead by existing international conventions and a combination of new and pre-EU domestic rules.

Separate regulations, the [Civil Partnership and Marriage \(Same Sex Couples\) \(Jurisdiction and Judgments\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), would apply the same rules on jurisdiction, recognition and enforcement to divorce of same sex couples and civil partnership dissolution as would apply to divorce of opposite sex couples.

The Government envisages revoking these new statutory instruments, in their entirety, if a deal is reached.

The Government has published guidance which deals with the practical effect of no-deal Brexit on family law disputes.

What will be the position after exit day if there is a deal?

The terms of any Brexit deal would determine which rules would apply in respect of civil judicial co-operation in family matters after exit day.

The proposed Withdrawal Agreement, which has not been endorsed by the House of Commons, covers jurisdiction, recognition and enforcement of judicial decisions, and related co-operation between central authorities. It provides that the current EU civil judicial cooperation rules would continue to apply to legal proceedings instituted before the end of the transition period, and that relevant EU law on recognition and enforcement of judgments would continue to apply in regard to judgments in these proceedings.

The associated Political Declaration states that the Parties would explore options for judicial cooperation in matrimonial, parental responsibility and other related matters.

1. Current position

1.1 Substantive law of divorce

The substantive law of divorce sets out such matters as the grounds for divorce and how the assets and income of the divorcing couple might be divided. This is governed by national law and is unlikely to be affected by Brexit.

1.2 Civil judicial co-operation within the EU

Parties wishing to divorce may both be nationals of, and resident in, the UK. Increasingly, however, divorce may involve nationals or residents of different countries, within the EU or elsewhere.

In January 2019, Shadow Justice Minister, Yasmin Qureshi, spoke of the number of people involved in cross-border family disputes:

There are approximately 1 million British citizens living in other EU member states, and some 3 million EU nationals living in the United Kingdom. To illustrate the scale of all this, at the moment there are approximately 16 million cross-border disputes on family law matters, 14,000 international divorces and approximately 1,800 child abduction cases in the European Union.¹

Civil judicial co-operation in family law is the legal framework that governs the interaction between different legal systems in cross-border situations, including divorce. In order to provide certainty and to avoid litigation in the courts of more than one country on the same dispute, a set of rules govern:

- which country's law applies;
- which country's courts have jurisdiction to hear the case; and
- the recognition and enforcement in one country of a judgment obtained in another country.

The relevant rules are based on the parties' domicile (nationality in some countries) and/or habitual residence. These terms have complex meanings but, in general, 'residence' refers to where someone's life is mainly based – their physical location, while 'domicile' refers to the person's main permanent home where they live, or to which they intend to return.

At present, two directly applicable EU Regulations deal with civil judicial co-operation in family matters.

- As well as dealing with other matters, Council Regulation No. 2201/2003 (**Brussels IIa**) provides rules:
 - to decide which EU Member State's court has the power to act (jurisdiction) in proceedings for matrimonial matters of divorce, legal separation and annulment of marriage; and

¹ [Ninth Delegated legislation Committee, Draft Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019, 30 January 2019 c6](#)

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- on recognition and enforcement of one Member State's judgments relating to these matters in other Member States.²
- Council Regulation No. 4/2009 (**the Maintenance Regulation**) provides rules:
 - to decide which court has the power to act (jurisdiction) in proceedings for family maintenance obligations;
 - on recognition and enforcement of family maintenance decisions relating to these matters between EU Member States;
 - on co-operation between central authorities to assist individuals and courts to deal with applications and requests between parties in different EU Member States on matters covered by the Maintenance Regulation; and
 - on the provision of legal aid in such matters.³

Both regulations include 'first in time' rules ("lis pendens"). This means that, where proceedings have been commenced in one Member State, the courts of other Member States are required to stay (halt) any subsequent equivalent proceedings until the jurisdiction of the first court has been determined.

In June 2019, the Council of the EU adopted new rules ("Brussels IIa Recast Regulation"). The changes mainly concern proceedings related to parental responsibility matters and international child abduction, and are designed to make court proceedings "clearer, faster and more efficient".⁴ Further information is provided on the [European Commission website](#). As indicated on the [Council's website](#), the new rules will apply three years after the publication of the regulation in the Official Journal of the European Union.

Jurisdiction for divorce under Brussels IIa

Currently, divorce jurisdiction in England and Wales for all cases – whether or not there is an international dimension - is primarily based on Brussels IIa rules.

[Article 3](#) sets out the rules for 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

² This regulation does not apply in Denmark

³ [Explanatory Memorandum to the Jurisdiction and Judgments \(Family\) \(Amendment Etc.\) \(EU Exit\) Regulations 2019](#), paragraphs 2.2 and 2.3

⁴ European Commission press release, [Adoption of new rules to better protect children caught in cross-border parental disputes](#), 25 June 2019

- 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.

An additional basis for jurisdiction, the sole domicile of either party to the marriage, is only available as a basis of jurisdiction if no other EU court has jurisdiction.⁵

1.3 Justice Committee report

On 22 March 2017, the House of Commons Justice Committee published a report, [Implications of Brexit for the justice system](#).⁶ The Justice Committee described Brussels Ia as forming "the heart of cross-border family law in the EU".⁷ The Committee considered this regulation and the complementary Maintenance Regulation to be procedural rather than substantive:

that is, they do not set grounds for divorce, for example, across the EU; instead, they help to resolve cases by determining where cross-border cases should be heard and adjudicated upon (known as jurisdiction), and ensuring that the decisions of the court with jurisdiction are recognised and enforced throughout the EU.⁸

1.4 Jurisdiction in other cross-border divorces

When divorce and/or financial provision proceedings are issued both in England and Wales and in a country which is not an EU Member State, the court in England and Wales decides which country's court should deal with the divorce - based on where the family has the closest connection (the forum conveniens). This issue can itself sometimes involve expensive and time-consuming litigation.

The 1970 Hague Convention on the Recognition of Divorces and Legal Separations provides rules for the recognition of divorces and legal separations.

⁵ Government Guidance, [Handling civil legal cases that involve EU countries if there's no Brexit deal](#), 13 September 2018

⁶ House of Commons Justice Committee, [Implications of Brexit for the justice system](#), 22 March 2017, HC 750 2016–17

⁷ Ibid, paragraph 19

⁸ Ibid

1.5 Why is it important where a divorce takes place?

The country in which proceedings take place may have more relevance in relation to any related financial proceedings than to the divorce itself. The courts in some countries, including England and Wales, have a reputation for being more generous than others to the financially weaker party.

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If the UK leaves the EU without an agreement relating to these matters, Brussels IIa and the Maintenance Regulation would no longer operate reciprocally. EU Member states would not be obliged to apply these rules to cases involving the UK, nor would they be required under the regulations to enforce or recognise decisions of the courts in the UK.

2.1 Government guidance

In September 2018, the UK Government published [guidance on handling civil legal cases that involve EU countries if there's no Brexit deal](#). This set out the following information about family law co-operation:

We are a contracting state in our own right to a number of Hague Conventions on family law, which cover many of the same areas as the Brussels IIa and Maintenance Regulations. Where this is the case, we would repeal the existing EU rules and switch to the relevant Hague Conventions. The relevant rules covered by the Hague Conventions are:

- parental responsibility matters, including jurisdiction, recognition and enforcement
- rules for the return of abducted or wrongfully retained children
- maintenance recognition and enforcement
- central authority co-operation

There is also a Hague Convention on divorce recognition, which has been implemented by provisions in the Family Law Act 1986. We would continue to use these wide recognition rules in the UK to recognise overseas divorces.

(...)

We would take the necessary steps to formally re-join the 2007 Hague Maintenance Convention (in which we currently participate because of our EU membership). We will seek to ensure that the convention comes into effect as soon as possible after exit. Parties would need to consider the implications for any new maintenance applications made during any gap in coverage of the 2007 Hague Convention.

The guidance notes that there are some differences between the EU and Hague rules in these areas but states that the Hague Conventions provide “an effective alternative to the EU rules”.

In some areas of family co-operation there are no relevant Hague Conventions. The guidance states that, in most of these cases, the Government would repeal the EU rules and, in relation to divorce, would proceed as follows:

In England, Wales and Northern Ireland we would repeal the Brussels IIa rules. The different bases for divorce jurisdiction set out in Article 3 of Brussels IIa (save for joint application which is

not applicable) would be replicated in English, Welsh and Northern Irish domestic law so that these bases apply for England, Wales and Northern Ireland for all cases. The additional basis of sole domicile of either party, would be available for all cases. The Scottish Government is considering the best approach for Scotland in the area of divorce jurisdiction.

The EU 'lis pendens' rules which require courts to halt divorce proceedings if an EU court has already begun to consider the case, would be repealed for all parts of the UK as they would not be reciprocated by the EU courts. Instead the courts in each UK jurisdiction would decide which is the most appropriate court to hear a case, as they currently do for cases outside the scope of Brussels IIa.

These changes in divorce jurisdiction and recognition provisions would be replicated for same sex marriages and civil partners in all applicable parts of the UK. We would also retain domestic rules that allow for the UK to provide a divorce or dissolution jurisdiction of last resort for cases where the couple formed their relationship under the law here and other states do not recognise their same sex marriage or civil partnership.

For decisions in relation to the jurisdiction for maintenance cases, we would intend broadly to adopt the position prior to the introduction of the Maintenance Regulation and other EU rules. The jurisdiction grounds of this would vary depending on the type of maintenance sought and in which part of the UK the case is brought.

All parts of the UK would unilaterally recognise incoming Civil Protection Measures from EU countries, to ensure that vulnerable individuals would continue to be protected.

2.2 The Regulations

The [Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019](#) (the 2019 Regulations) were made on 6 March 2019 as part of the Government's preparations for a no-deal Brexit.⁹ They will come into force on exit day.

The [Explanatory Memorandum](#) published with the 2019 Regulations sets out detailed information about their effect and the rules which will apply after exit day.

In short, the 2019 Regulations revoke Brussels IIa for England and Wales and Northern Ireland and revoke the Maintenance Regulation for the UK, except in relation to proceedings or applications which have already started before exit day. The relevant matters are to be governed instead by existing international conventions and a combination of new and pre-EU domestic rules.¹⁰

⁹ SI 2019/519

¹⁰ [Ninth Delegated legislation Committee, Draft Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019, 30 January 2019 cc4-5](#)

2.3 Which rules will apply after exit day?

In Delegated Legislation Committee debate on the draft instrument which preceded the Regulations, Lucy Frazer, who was then a junior Justice Minister, summarised the rules which will apply after exit day:

We have ensured that the UK will, in the event of a no-deal exit, be a contracting state under the 2007 Hague convention after exit. We will continue to use the wide rules in the Family Law Act 1986 for the recognition in the UK of overseas divorces, and those in the Civil Partnership Act 2004 for the recognition of such dissolutions. There will be some gaps in coverage and the potential loss of effectiveness and efficiency. In particular, there is no Hague convention covering the grounds of jurisdiction for divorce or maintenance.

For jurisdiction in maintenance cases, the draft statutory instrument makes provision to return, therefore, to the rules of common law or statutory rules that operated before the maintenance regulation and other relevant instruments came into force. We will also amend our common law in relation to the jurisdiction for divorce cases. The Brussels IIa jurisdiction grounds presently apply to all cases, regardless of whether there is any overseas connection or whether any overseas connection is to an EU member state or to a state outside the EU.

Those grounds have applied for a long time and will have the benefit of familiarity, having been tried and tested. We will replicate in domestic law the applicable Brussels IIa grounds for England and Wales and Northern Ireland, and make a further ground of sole domicile applicable to all cases.

(...)

... the EU signs up to the Hague convention, and therefore the member states are signed up as parties under the umbrella of the EU.¹¹

Separate regulations, the [Civil Partnership and Marriage \(Same Sex Couples\) \(Jurisdiction and Judgments\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#),¹² would apply the same rules on jurisdiction, recognition and enforcement to divorce of same sex couples and civil partnership dissolution as would apply to divorce of opposite sex couples.

Lucy Frazer added that the Government envisaged revoking these new statutory instruments in their entirety, if a deal was reached.¹³

Yasmin Qureshi said that Labour would support the draft regulations in the event of no deal, “as it would be inappropriate unilaterally to continue those mechanisms”. However, she did not consider the future arrangements would be as good as the current ones:

While we are pleased that the 2007 Hague convention has been signed by the United Kingdom in its own right, rather than through its European Union membership, and while I hear what the Minister said about signing up to various international

¹¹ [Ninth Delegated legislation Committee, Draft Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019, 30 January 2019 c1](#)

¹² [SI 2019/495](#)

¹³ [Ninth Delegated legislation Committee, Draft Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019, 30 January 2019 c6](#)

conventions meaning that the situation would not be as bad, they are limited as to what they can do. Our current arrangements are far superior, very easy and straightforward.

One of the issues is that the arrangements that we will have to fall back on—the international agreements or the common law—were often something that only affluent people could have afforded. People who have lower incomes, do not have access to decent legal aid or are vulnerable adults are the ones who will suffer the most, because they do not have the resources or knowledge to deal with such cases.¹⁴

2.4 What does this mean in practical terms?

The Government has now published further guidance which deals with the practical effect of no-deal Brexit on family law disputes.

UK Government guidance for people going through or planning to divorce

On 8 August 2019, the Ministry of Justice published [Cross-border divorce after Brexit](#). This short guidance is aimed at people who are currently going through, or planning, a divorce. Such people are advised to seek legal advice to consider how their case might be affected by Brexit.

The guidance states that divorce cases which are ongoing in court in England or Wales when the UK leaves the EU, will continue under current rules. New rules will apply to new cases started after exit day, but the guidance specifies that applications should be made in the same way.

The guidance also sets out information about divorce recognition:

If your divorce has been made final in the UK before Brexit and you are:

- 1.a UK citizen divorcing an EU national or person living in the EU
- 2.an EU citizen

you will need to take steps to make sure your divorce is recognised in the EU. You should:

- get a certificate from the court that granted your divorce
- send it for acceptance (registration) to the EU country you need to recognise your divorce (likely to be the country where the EU person involved is living or from).

UK Government guidance for legal professionals

On 29 March 2019, the Ministry of Justice published, [Family law disputes involving EU after Brexit: guidance for legal professionals](#). This deals not only with divorce cases but also with the law relating to maintenance; international child abduction; parental responsibility; and placement of children – in each case after a no-deal Brexit. The guidance applies only to cases in England and Wales.

¹⁴ [Ninth Delegated legislation Committee, Draft Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019, 30 January 2019 c7](#)

The guidance confirms that Brussels Ila will no longer apply to new divorce cases in England and Wales:

As retained EU law it is revoked, and jurisdictional rules for the court in England and Wales which replicate those in Brussels Ila have been inserted into section 5(2) of the Domicile and Matrimonial Proceedings Act 1973, by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations. Sole domicile as a ground of divorce etc jurisdiction has been added. The court in England and Wales will have a discretion to stay proceedings when there are proceedings continuing in another jurisdiction.

The guidance sets out the following further information in relation to divorce cases:

- Jurisdiction for divorce cases ongoing in an EU Member State after a no-deal Brexit:

The European Commission has given guidance to the EU-27 that for proceedings underway in EU Member States when the UK leaves the EU where the respondent is domiciled in the UK, the jurisdiction rules of Brussels Ila will apply.

- Jurisdiction for new divorce cases in an EU Member State after a no-deal Brexit:

There is no international law on which court has jurisdiction for divorce etc other than Brussels Ila. This means that unless the EU instrument on the subject in question sets the rules of jurisdiction with regard to third countries, jurisdiction in cross border cases after a no-deal Brexit will be governed by the national rules of the Member State of the court to which application is made.

- Recognition by the courts of England and Wales of orders for divorce in cases ongoing at the point of a no-deal Brexit:

The court in England and Wales will continue to recognise divorces granted in EU Member States in the same way as under Brussels Ila in a no-deal Brexit, if the recognition proceedings started before Brexit.

- Recognition by the courts of England and Wales of orders for divorce in cases commenced after a no deal Brexit:

The court in England and Wales will, after a no-deal Brexit, recognise divorces granted in EU Member States in the same way as they currently do for orders from non-EU countries. The rules on recognition are to be found in the Family Law Act 1986 which implemented the 1970 Hague Convention on the recognition of divorce and legal separations.

(The 12 EU Member States that are party to the 1970 Hague Convention on Divorce Recognition at the time of exit are Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Sweden.)

- Recognition by the courts of an EU Member State of orders for divorce in cases ongoing at the point of a no-deal Brexit:

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The European Commission has given guidance to the EU-27 that orders made in the UK before the UK leaves the EU which are to be enforced in EU Member States must have reached the stage of having obtained a declaration of enforceability (what we would call registration for enforcement) if Member States are to enforce them under the EU rules.

If a declaration of enforceability has been obtained in the relevant EU Member State before the UK leaves the EU for orders which require enforcement, the order will already have been recognised, since recognition precedes the declaration of enforceability.

Parties may wish to consider seeking local legal advice in the relevant EU Member State if possible.

- Recognition by the courts of an EU Member State of orders for divorce in cases commenced after a no deal Brexit:

The recognition in an EU Member State of a divorce order (decree absolute) granted in England and Wales after the UK leaves the EU will be governed by each Member State's national rules of private international law, unless they are party to the 1970 Hague Convention on Divorce Recognition, in which case the rules of that Convention apply, for divorce and separation only.

The approach to the recognition of the divorce of same sex couples varies significantly between Member States. Parties should seek local legal advice.

European Commission guidance

On 18 January 2019, the European Commission issued updated guidance, [Withdrawal of the United Kingdom and EU Rules in the field of civil justice and private international law](#).¹⁵ It confirms that:

For proceedings involving a United Kingdom domiciled defendant initiated on or after the withdrawal date in the EU-27 Member States, the rules on international jurisdiction in EU instruments in the area of civil and commercial law as well as family law no longer apply, unless the EU instruments set the rules of jurisdiction with regard to third countries.¹⁶

¹⁵ European Commission, [Withdrawal of the United Kingdom and EU Rules in the field of civil justice and private international law](#), 18 January 2019

¹⁶ Ibid, paragraph 1.2

3. What will be the position after exit day if there is a deal?

The terms of any Brexit deal would determine which rules would apply in respect of civil judicial co-operation in family matters after exit day.

In January 2019, Resolution and the Law Society issued a [joint note to family lawyers in England and Wales of practical recommendations in the circumstances of no deal on EU exit](#). This states:

if there is any EU deal it is virtually certain that EU laws will continue throughout any transition or similar period ...

This part of this briefing paper deals with how future civil judicial co-operation has been considered in documents published in the course of Brexit negotiations.

3.1 EU position paper

On 13 July 2017, the EU published a position paper, [Judicial Cooperation in Civil and Commercial matters](#).¹⁷ This dealt only with how withdrawal would affect existing proceedings, choice of courts and choice of law.

3.2 UK Government's 2017 policy paper

The UK Government's policy paper, [Providing a cross-border civil judicial cooperation framework - a future partnership paper](#), published on 22 August 2017, was more wide-ranging. It set out the UK's position that a new framework was needed for future cases, although it did not set out in detail how this would be achieved. The Government's paper also responded to the EU's paper, setting out its position on what should happen at withdrawal to existing cases, in the absence of any new agreement.

The Government said that it was seeking an arrangement for the future similar to the current position:

The UK will therefore seek an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation on a reciprocal basis, which reflects closely the substantive principles of cooperation under the current EU framework.¹⁸

3.3 Justice Committee report

In its 2017 report, [Implications of Brexit for the justice system](#),¹⁹ the House of Commons Justice Committee called on the Government to maintain co-operation with the EU on family justice matters:

24. Brussels IIa and the Maintenance Regulation are improvements over their default alternatives. They are not without fault: races to issue resulting from Brussels IIa's divorce provisions

¹⁷ TF50 (2017) 9/2

¹⁸ Ibid, paragraph 19

¹⁹ House of Commons Justice Committee, [Implications of Brexit for the justice system](#), 22 March 2017, HC 750 2016–17

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are particularly undesirable. Nonetheless, mutual recognition and enforcement of judgments in family cases is of demonstrable value in resolving cross-border instances of child abduction and non-payment of maintenance.

25. We recommend that the Government should seek to maintain the closest possible cooperation with the EU on family justice matters, and in particular to retain a system for mutual recognition and enforcement of judgments.

In its response to the Committee, the Government said that it would seek an agreement with the EU that allowed for “close and comprehensive cross-border civil judicial cooperation on a reciprocal basis”:

It is vital that families can have emotionally difficult and sensitive issues resolved in a way that is fair and speedy.

As set out in the Future Partnership Paper ‘Providing a Cross-Border Civil Judicial Cooperation Framework’, published on 22 August, the Government is seeking an agreement with the EU that allows for close and comprehensive cross-border cooperation in civil and family matters, reflecting closely the substantive principles of the current framework. ... These rules would minimise the potential for parallel proceedings, establishing clearly which courts should hear a case and allow judgments and court orders from one country to be recognised and enforced in another.

The Government recognises the usefulness of the rules laid out in the Brussels IIa and Maintenance Regulations in relation to cross-border family disputes. As the Committee notes, these conventions build on existing international agreements which provide a degree of cooperation with third countries.

(...)

We recognise the value to families and individuals of the various Hague Conventions and it is our intention to remain an active member of the Conference which operates these, while recognising they are in some areas more limited in their scope than the equivalent EU instruments. For example, while the 1996 Hague Convention covers most areas that are within the scope of Brussels IIa, including rules on jurisdiction and recognition and enforcement of judgments in children matters, it does not include jurisdiction or recognition rules on divorce. The UK participates in the 1970 Hague Convention on Recognition of Divorce, but this contains only rules on recognition of divorce and not jurisdiction and only some Member States are parties.

The UK will therefore seek an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation on a reciprocal basis, which reflects closely the substantive principles of cooperation under the current EU framework.²⁰

3.4 Proposed Withdrawal Agreement

On 14 November 2018, the European Commission and UK Government published a draft withdrawal agreement. The negotiated text of the [Withdrawal Agreement](#), together with the [Political Declaration](#) on the

²⁰ House of Commons Justice Committee, The implications of Brexit for the justice system: Government Response to the Committee’s Ninth Report of Session 2016–17, HC 651, 15 December 2017, pp2-3

framework for future EU-UK relations, was endorsed by EU leaders at a specially convened European Council meeting on 25 November 2018. The Withdrawal Agreement has not been endorsed by the House of Commons. Another Library briefing paper provides further information:

[The UK's EU Withdrawal Agreement](#).²¹

Article 67 of the Withdrawal Agreement covers jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities. It provides that the current EU civil judicial cooperation rules would continue to apply to legal proceedings instituted before the end of the transition period, and that relevant EU law on recognition and enforcement of judgments would continue to apply in regard to judgments in these proceedings.

The associated [Political Declaration](#) states:

57. To support mobility, the Parties confirm their commitment to the effective application of the existing international family law instruments to which they are parties. The Union notes the United Kingdom's intention to accede to the 2007 Hague Maintenance Convention to which it is currently bound through its Union membership.

58. The Parties will explore options for judicial cooperation in matrimonial, parental responsibility and other related matters.²²

²¹ Number 08453, 11 April 2019

²² [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#)

4. Background reading

The following is a (non-exhaustive) list of background material:

- House of Lords European Union Committee, [Brexit: justice for families, individuals and businesses?](#), 20 March 2017, HL134 2016-17;
- House of Commons Justice Committee, [Implications of Brexit for the justice system](#), 22 March 2017, HC 750 2016–17; [Government response](#), 15 December 2017, HC 651 2017-19;
- Bar Council Brexit Working Group, [The Brexit Papers, Family Law, Paper 6, 3rd edition](#), June 2017;
- EU position paper, [Judicial Cooperation in Civil and Commercial matters](#), 13 July 2017;
- Department for Exiting the European Union, [Providing a cross-border civil judicial cooperation framework - a future partnership paper](#), 22 August 2017;
- Family Law Bar Association, International Academy of Family Lawyers, and Resolution, [Brexit and Family Law](#), October 2017;
- [Joint Resolution and Law Society note to family lawyers in England and Wales of practical recommendations in the circumstances of no deal on EU exit](#), January 2019;
- [Joint Resolution and Law Society note to family lawyers in England and Wales of practical recommendations in the circumstances of no deal on EU exit Further considerations](#), March 2019;
- European Union Your Europe, [Divorce and legal separation](#), last checked 10 May 2019.

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