



BRIEFING PAPER

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The effect of Brexit on getting divorced

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Contents:

1. Divorce law
2. Where to apply for divorce
3. Civil judicial co-operation in family matters within the EU
4. UK-EU cross-border divorces from 1 January 2021



Contents

Summary	3
1. Divorce law	6
1.1 The current basis for divorce in England and Wales	6
1.2 “No-fault divorce” to be introduced	6
1.3 Further information	6
2. Where to apply for divorce	8
2.1 Jurisdiction of courts in England and Wales	8
2.2 Divorce with an international aspect	9
Court’s discretion to halt proceedings	9
Recognition of overseas divorces	10
2.3 Why is it important where a divorce takes place?	10
3. Civil judicial co-operation in family matters within the EU	11
3.1 EU Regulations	11
3.2 Jurisdiction for divorce under Brussels IIa	12
4. UK-EU cross-border divorces from 1 January 2021	13
4.1 Transitional/ongoing cases	13
4.2 New divorce cases starting after the end of the transition period	14
EU Regulations revoked	14
Rules applying in new divorce cases	15
European Commission guidance	16

Summary

This briefing paper is not being updated.

This briefing paper provides an overview of the rules which affect getting divorced where there is a cross-border element, including divorces involving residents or nationals of EU Member States. It deals with the position in England and Wales except where stated otherwise. It does not deal with other family law matters relating to children or the payment of maintenance.

Anyone involved in a divorce where there is an international dimension should consider seeking specialist legal advice.

The previous version of this briefing paper was entitled, "Getting divorced if there is a no-deal Brexit".

Divorce law

The law of divorce, which sets out such matters as the grounds for divorce and how the assets and income of the divorcing couple might be divided, is governed by national legislation, as it was prior to the UK leaving the European Union. It is anticipated that the [Divorce, Dissolution and Separation Act 2020](#), which will reform divorce law in England and Wales, will be implemented in autumn 2021.

However, Brexit may affect UK-EU cross-border divorces in matters such as where a divorce takes place and the recognition and enforcement of orders relating to divorce.

Jurisdiction to deal with an application for divorce

The rules providing the courts in England and Wales with legal power (jurisdiction) to deal with applications for divorce are based on the parties' "habitual residence" and/or "domicile". Broadly, "habitual residence" is where a person is settled (eg where they work and where their main family life takes place), whereas "domicile" is the main permanent home in which they live, or to which they intend to return.

Divorce with an international aspect

Parties involved in a divorce may both be nationals of, and resident and domiciled in, England and Wales. However, divorce may also involve nationals and residents of different countries, within the EU or elsewhere. It may be necessary to consider which country's law applies; which country's courts have jurisdiction to hear the case; and how a judgment obtained in one country might be recognised and enforced in another country.

When divorce proceedings are issued both in England and Wales and in another country, the court in England and Wales has discretion to stay (halt) the proceedings here if it considers, on the balance of fairness (including convenience) as between the parties, that it is appropriate for the case to be dealt with in the other jurisdiction.

The UK is a Contracting State to a number of Hague Conventions on family law, including the [1970 Hague Convention on the Recognition of Divorces and Legal Separations](#) which provides rules for the recognition of divorces and legal separations.

UK-EU cross-border divorces

EU Regulations

The following EU Regulations deal with civil judicial co-operation within the EU in family matters:

- Brussels Ila, which provides rules relating to (among other things) jurisdiction in proceedings for matrimonial matters of divorce, legal separation and annulment of marriage, and for the recognition and enforcement of one Member State's judgments relating to these matters in other Member states; and
- the Maintenance Regulation which provides rules relating to (among other things) jurisdiction in proceedings for family maintenance obligations, on recognition and enforcement of family maintenance decisions relating to these matters between EU Member States, and on cooperation 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.

Both regulations include "first in time" rules ("lis pendens") which operate on a reciprocal basis. This means that, where proceedings have been started 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.

Judgments on divorce in one Member State are generally recognised in other Member States without any special procedure.

Transitional/ongoing cases at the end of the transition period

The treatment of divorce cases commenced, whether in the UK or in an EU Member State, before the end of the transition period (11pm on 31 December 2020) is governed by the [Withdrawal Agreement](#). The Brussels Ila provisions relating to jurisdiction continue to apply to such cases, and to the recognition and enforcement of judgments delivered in them.

New cases

The [Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019](#) (as amended) (the Regulations) came into force on 31 December 2020. The Regulations revoke Brussels Ila for England and Wales and Northern Ireland and the Maintenance Regulation for the UK, except in relation to proceedings or applications which were ongoing at the end of the transition period. The Regulations also revoke provisions in domestic legislation which implemented these EU Regulations and amend primary and secondary legislation.

The Regulations set out rules of jurisdiction, largely based on the Brussels Ila rules, which apply to new divorce cases in England and Wales. They also replace the "lis pendens" rules. The discretionary stay provisions that previously applied only in cases involving a non-EU Member State now apply more generally instead.

The rules relating to recognition of divorces are also those which previously applied only in cases involving non-EU Member State 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.

Only 12 EU Member States are currently party to 1970 Hague Convention: Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Sweden. The recognition of a divorce obtained in England and Wales in other EU countries will be dependent on their national law.

Separate regulations, the [*Civil Partnership and Marriage \(Same Sex Couples\) \(Jurisdiction and Judgments\) \(Amendment etc.\) \(EU Exit\) Regulations 2019*](#), deal with dissolution of civil partnership and divorce of same sex couples.

1. Divorce law

The law of divorce, which sets out such matters as the grounds for divorce and how the assets and income of the divorcing couple might be divided, is governed by national legislation, as it was prior to the UK leaving the European Union.

1.1 The current basis for divorce in England and Wales

At present, to get divorced in England and Wales, it is necessary for one party to submit a petition to the court. The only ground for divorce is that the marriage has broken down irretrievably.¹ To establish this, the petitioner must satisfy the court of one or more of five facts. Three of the facts are fault based (adultery, behaviour, desertion), and two relate to periods of separation (two years if the respondent consents, otherwise, five years).²

1.2 “No-fault divorce” to be introduced

The [Divorce, Dissolution and Separation Act 2020](#) received Royal Assent on 25 June 2020. Among other things, when implemented, this Act will:

- replace the requirement to provide evidence of conduct or separation facts with a new requirement to provide a statement of irretrievable breakdown;
- remove the possibility of contesting the decision to divorce, as the statement of irretrievable breakdown will be taken as conclusive evidence that the marriage has broken down irretrievably;
- introduce a new option of a joint application;
- introduce a minimum overall timeframe of six months into the divorce process.

The law relating to judicial separation, and to dissolution of civil partnership and separation of civil partners, will be amended in a similar way.

The Ministry of Justice is working to an indicative timetable of autumn 2021 for implementation.³

1.3 Further information

- Gov.UK:
 - HM Courts and Tribunals Service, [About divorce/dissolution \(D183\)](#), last updated 31 December 2020;

¹ [Matrimonial Causes Act 1973 section 1](#)

² [Matrimonial Causes Act 1973 section 1\(2\)](#)

³ Ministry of Justice, [Family Procedure Rule Committee consultation on draft changes to the Family Procedure Rules arising from planned implementation of the Divorce, Dissolution And Separation Act 2020](#), 15 December 2020 [accessed 20 January 2021]

7 Commons Library Briefing, 20 January 2021

- Press release from Ministry of Justice and The Rt Hon Robert Buckland QC MP, “[‘Blame game’ to end as Divorce Bill receives Royal Assent](#)”, 26 June 2020;⁴
- Commons Library briefing papers:
 - [Divorce, Dissolution and Separation Bill \[HL\] 2019-21](#);⁵
 - [Financial provision when a relationship ends](#).⁶

⁴ Links to Gov.UK accessed 20 January 2021

⁵ Number 08697, 4 June 2020

⁶ Number 05655, 20 February 2020

2. Where to apply for divorce

2.1 Jurisdiction of courts in England and Wales

The rules providing the courts in England and Wales with legal power (jurisdiction) to deal with applications for divorce are based on the parties' "habitual residence" and/or "domicile". These are technical terms with complex meanings. The [application form for divorce](#) provides the following general definitions:

Habitual Residence

Your habitual residence is the place in which your life is mainly based. You must be settled there and intend to stay settled there. Some of the following may apply: you work there, own property, have your children in school there, and your main family life takes place there.

Domicile

Your domicile is the main permanent home in which you live, or to which you intend to return. When you were born you will have acquired your parents' domicile (either your father's if they were married, or your mother's if they weren't married or if your father died before you were born). If you have since moved to another country and made that your permanent home then your domicile may have moved there.

If you were born in England or Wales, lived your entire life here, and intend to stay here, then it is very likely that you'll be both habitually resident and domiciled here. You should get legal advice if you are not sure which reason(s) apply.⁷

When applying for a divorce in England and Wales, the applicant is required to confirm why they consider the court has jurisdiction to deal with the case by ticking the reasons that apply on the following list:

- both parties to the marriage/civil partners are habitually resident in England and Wales;
- both parties to the marriage/civil partners were last habitually resident in England and Wales and one of them continues to reside there;
- the respondent is habitually resident in England and Wales;
- the applicant is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made;
- the applicant is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made;
- both parties to the marriage/civil partners are domiciled in England and Wales; or

⁷ HM Courts and Tribunals Service, [Form D8, Application for a divorce, dissolution or \(judicial\) separation](#), January 2021, p8

- the applicant or the respondent is domiciled in England and Wales.⁸

Alternatively, if those options do not apply, the applicant is invited to consider whether the below is applicable:

- the Applicant and Respondent registered as civil partners of each other in England or Wales or, in the case of a same sex couple, married each other under the law of England and Wales and it would be in the interests of justice for the court to assume jurisdiction in this case.⁹

Courts in England and Wales have jurisdiction to deal with an application for divorce under the following legislation:

- for the divorce of an opposite sex couple, section 5(2) of the Domicile and Matrimonial Proceedings Act 1973;
- for the divorce of a same sex couple, the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014 and Schedule A1 to the Domicile and Matrimonial Proceedings Act 1973.

Courts in England and Wales also have jurisdiction to deal with applications for the dissolution of civil partnerships under the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 and Section 221 of the Civil Partnership Act 2004.¹⁰

2.2 Divorce with an international aspect

Parties involved in a divorce may both be nationals of, and resident and domiciled in, England and Wales. However, divorce may also involve nationals or residents of different countries, within the EU or elsewhere. It may be necessary to consider:

- which country's law applies;
- which country's courts have jurisdiction to hear the case; and
- how a judgment obtained in one country might be recognised and enforced in another country.

Court's discretion to halt proceedings

When divorce proceedings are issued both in England and Wales and in another jurisdiction (now including EU Member States, in cases started after the end of the transition period at 11pm on 31 December 2020), the court in England and Wales has discretion to stay (halt) the proceedings here.¹¹

The court may make this decision if it considers that, on the balance of fairness (including convenience) as between the parties, it would be appropriate for the proceedings in the other jurisdiction to be disposed

⁸ Ibid

⁹ Ibid, p9

¹⁰ Ibid, p8

¹¹ [Domicile and Matrimonial Proceedings Act 1973 Schedule 1 paragraph 9](#) (as amended). There is an obligatory stay in specified circumstances if there are ongoing proceedings in a "related jurisdiction" (Scotland, Northern Ireland, Jersey, Guernsey, Alderney, Sark or the Isle of Man): [Domicile and Matrimonial Proceedings Act 1973 Schedule 1 paragraph 8](#)

10 The effect of Brexit on getting divorced

of before any further steps are taken in the court in England and Wales. In considering the balance of fairness and convenience, the court is directed to “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 stayed, or not being stayed”.¹²

This issue can itself sometimes involve expensive and time-consuming litigation.

Recognition of overseas divorces

The UK is a Contracting State to a number of Hague Conventions on family law, including the [1970 Hague Convention on the Recognition of Divorces and Legal Separations](#) which provides rules for the recognition of divorces and legal separations.

For the recognition of divorces, the provisions of the *1970 Hague Convention* are implemented by the [Family Law Act 1986](#) (as amended),¹³ which also provides additional provision for recognition as permitted in the Convention.¹⁴

UK Visas and Immigration guidance, [Overseas divorces: SET13](#), published on 25 August 2013, provides further information.

2.3 Why is it important where a divorce takes place?

The country in which proceedings take place may sometimes 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.

¹² [Domicile and Matrimonial Proceedings Act 1973 Schedule 1 paragraph 9\(2\)](#)

¹³ The [Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019](#) (SI 2019/519) amends the Family Law Act 1986 to apply to the recognition of divorce etc orders obtained in EU Member States after the end of the transition period

¹⁴ [Explanatory Memorandum to the Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), paragraph 7.4

3. Civil judicial co-operation in family matters within the EU

3.1 EU Regulations

The following directly applicable EU Regulations deal with civil judicial co-operation in family matters, including divorce – that is, they deal with the interaction between different legal systems in cross-border situations:

- 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
 - on recognition and enforcement of one Member State’s judgments relating to these matters in other Member States.¹⁵
- 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.¹⁶

Both regulations include “first in time” rules (“lis pendens”). This means that, where proceedings have been started 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. This has sometimes been interpreted as involving a “race to issue”.

Judgments on divorce in one Member State are generally recognised in other Member States without any special procedure, under Article 21 of Brussels IIa.¹⁷

¹⁵ This regulation does not apply in Denmark. 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. Further information is provided on the [European Commission website](#) and in a European Council press release, [More effective rules to deal with cross border matrimonial matters and parental responsibility issues](#), 25 June 2019 [accessed 6 January 2021]

¹⁶ [Explanatory Memorandum to the Jurisdiction and Judgments \(Family\) \(Amendment Etc.\) \(EU Exit\) Regulations 2019](#), paragraphs 2.2 and 2.3

¹⁷ Subject to the exceptions contained in Article 22

12 The effect of Brexit on getting divorced

On 22 March 2017, the House of Commons Justice Committee published a report, [Implications of Brexit for the justice system](#).¹⁸ The Justice Committee described Brussels Ila as forming “the heart of cross-border family law in the EU”.¹⁹ 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.²⁰

3.2 Jurisdiction for divorce under Brussels Ila

[Article 3](#) sets out the rules for jurisdiction, based on the parties’ habitual residence and/or domicile (nationality in some countries):

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.

Until the end of the transition period, divorce jurisdiction in England and Wales for all cases – whether or not there was an international dimension - was primarily based on Brussels Ila rules.

An additional basis for jurisdiction, the sole domicile of either party to the marriage, was available as a basis of jurisdiction if no other EU court had jurisdiction.²¹

¹⁸ House of Commons Justice Committee, [Implications of Brexit for the justice system](#), 22 March 2017, HC 750 2016–17

¹⁹ Ibid, paragraph 19

²⁰ Ibid

²¹ Government Guidance, [Handling civil legal cases that involve EU countries if there’s no Brexit deal](#), 13 September 2018

4. UK-EU cross-border divorces from 1 January 2021

4.1 Transitional/ongoing cases

The treatment of divorce cases commenced, whether in the UK or in EU Member States, before the end of the transition period is governed by Title VI of Part 3 of the [Withdrawal Agreement](#). The Brussels IIa provisions relating to jurisdiction continue to apply to such cases, and to the recognition and enforcement of judgments delivered in them.

[Guidance](#) published by the Ministry of Justice on 31 December 2020,²² provides further information about jurisdiction and recognition in ongoing divorce cases:

Jurisdiction

Under the terms of the Withdrawal Agreement, divorce proceedings ongoing in England and Wales at the end of the transition period will continue under the current law and rules of [Council Regulation 2201/2003 \(Brussels IIa\)](#) to determine jurisdiction.

The jurisdiction rules set out in Article 3 of Brussels IIa have been applied to all cases of opposite sex divorce, legal separation and annulment (divorce etc.) in England and Wales, whether or not the case has a cross-border element.

The jurisdiction rules can mean that parties to a marriage may have standing to seize the court in a number of different member states. Parallel proceedings are avoided by the *lis pendens* rule in Article 19, requiring the court second seized to stay the proceedings before it.

For [same sex divorce](#) and [civil partnership dissolution](#), legislation in the UK provides jurisdiction rules which broadly replicate the rules in Brussels IIa.

Recognition

Courts in England and Wales will continue to recognise divorces granted in EU member states in the same way under Brussels IIa if the divorce was granted before the end of the transition period or if the divorce proceedings were started before the end of the transition period (even if the divorce is only ordered after the end of the transition period). Judgments on divorce have generally been recognised in other member states without any special procedure, under Article 21, subject to the exceptions contained in Article 22. A party seeking or contesting recognition of orders for divorce etc made in England and Wales is required to produce the documents detailed in Article 37 and in particular the Article 39 certificate at Annex I to Brussels IIa (see [family court form D180](#)).

²² [Family law disputes involving the EU: guidance for legal professionals from 1 January 2021](#), 31 December 2020. The guidance also deals with cases relating to maintenance; international parental child abduction; children cases (parental responsibility); and placement of children

14 The effect of Brexit on getting divorced

An interested party (in England and Wales or in an EU member state) can apply for a court order that a judgment on divorce should not be recognised.

For further information, refer to the [Family Procedure Rules 2010](#) and [D180 Certificate](#).

4.2 New divorce cases starting after the end of the transition period

EU Regulations revoked

The [Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019](#) (as amended) (the Regulations) came into force on 31 December 2020.²³ The [Explanatory Memorandum](#) published with the Regulations (the Explanatory Memorandum) sets out detailed information about their effect and the rules which will now apply.

The Regulations revoke Brussels IIa for England and Wales and Northern Ireland and the Maintenance Regulation for the UK, except in relation to proceedings or applications which were ongoing at the end of the transition period. The Regulations also revoke provisions in domestic legislation which implemented these EU Regulations,²⁴ and amend primary and secondary legislation.

Lucy Frazer, who was then a junior Justice Minister, made the following statements of appropriateness and good reasons for the Regulations:²⁵

“In my view the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

This is the case because, consistent with the vires in section 8 of the Act, this instrument does no more than ensure that, post exit, there will be effective rules in relation to jurisdiction, recognition and enforcement, central authority cooperation and legal aid in matrimonial, parental responsibility and maintenance matters to replace both the Brussels IIa rules in England and Wales and Northern Ireland and, to the extent specified, Scotland and the Maintenance Regulation rules in the UK, that will cease to apply reciprocally between the UK and the EU upon UK EU exit.

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

These are: as noted in paragraph 2.4,^[26] upon EU exit, Brussels IIa and the Maintenance Regulation will cease to apply to the UK meaning the reciprocity on which the Brussels IIa and Maintenance Regulation rules on jurisdiction, recognition and

²³ SI 2019/519 as amended. The Regulations were made in exercise of powers in the European Union (Withdrawal) Act 2018

²⁴ The domestic legislation that implemented the Maintenance Regulation is revoked except where the legislation is required to implement the 2007 Hague Convention on Child Support and Other Forms of Family Maintenance (the 2007 Hague Maintenance Convention) - [Explanatory Memorandum to the Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 No. 519](#), paragraph 7.1

²⁵ As required when using enabling powers under the European Union (Withdrawal) Act 2018

²⁶ Of the [Explanatory Memorandum](#) published with the 2019 Regulations

enforcement, central authority cooperation and legal aid are based will be lost. As noted in section 7, this instrument ensures that new rules (a combination of Hague Conventions and new domestic rules dealing with these matters) will be in place ensuring a functioning statute book upon exit.²⁷

Separate regulations, the [Civil Partnership and Marriage \(Same Sex Couples\) \(Jurisdiction and Judgments\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#),²⁸ deal with dissolution of civil partnership and divorce of same sex couples:

[This instrument] amends rules on jurisdiction and repeals rules on recognition for the divorce of same sex couples and the dissolution of civil partnerships to correspond to the changes being made in relation to opposite sex married couples by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019. This instrument also amends the powers to make regulations relating to jurisdiction and recognition to enable the use of the powers after UK exit.²⁹

Rules applying in new divorce cases

Jurisdiction

The Regulations set out rules of jurisdiction, largely based on the Brussels IIa rules, which apply to new divorce cases in England and Wales, as indicated in the [Ministry of Justice guidance](#):

Brussels IIa has been revoked. For cases starting after the end of the Transition Period, new jurisdictional rules for the court in England and Wales which are based on the applicable Brussels IIa rules 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 has discretion to stay proceedings when there are proceedings continuing in another jurisdiction.

For same sex divorce and civil partnership dissolution, legislation in the UK provides jurisdiction rules in the EU Exit Regulations which correspond to those for opposite-sex divorce.

For further information, refer to the [Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations](#) and the related Explanatory Memorandum.³⁰

The Regulations replace the “lis pendens” rules, which previously required the courts in England and Wales to halt divorce proceedings if the court of an EU Member State had already begun to consider the case. These rules had operated on a reciprocal basis.

The discretionary stay provisions that previously applied only in cases involving a non-EU Member State country now apply more generally instead. This means that when divorce proceedings are issued both in England and Wales and in another country, the court in England and

²⁷ [Explanatory Memorandum to the Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 No. 519](#), Annex Part 2, p10

²⁸ SI 2019/495

²⁹ [Explanatory Memorandum to the Civil Partnership and Marriage \(Same Sex Couples\) \(Jurisdiction and Judgments\) \(Amendment Etc.\) \(EU Exit\) Regulations 2019](#), paragraph 2

³⁰ Ministry of Justice, [Family law disputes involving the EU: guidance for legal professionals from 1 January 2021](#), 31 December 2020

Wales has discretion to stay (halt) the proceedings here if it considers, on the balance of fairness (including convenience) as between the parties, that it is appropriate for the case to be dealt with in the other jurisdiction.³¹

Applying for divorce

[Further Ministry of Justice guidance](#), published on 12 January 2021, states that applicants for divorce in England and Wales should apply in the same way as before.³²

Recognition of divorce

The rules relating to recognition are those which previously applied only in cases involving non-EU Member States:

The court in England and Wales recognises divorces granted in EU member states in which proceedings started after the end of the transition period 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 currently party to the 1970 Hague Convention on Divorce Recognition are Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Sweden.)³³

The Explanatory Memorandum states that, in the areas where there are Hague Conventions, they provide an alternative to the EU legislation and, "as they are already operated with non-EU Contracting States, the courts and legal practitioners who work in cross-border family law are familiar with them".³⁴

The recognition of a divorce obtained in England and Wales in EU Member States which are not party to the 1970 Hague Convention will be dependent on their national law.

The [Ministry of Justice guidance](#) published on 12 January 2021,³⁵ states:

Getting your England & Wales divorce recognised in an EU country if you applied for it after 11pm on 31 December 2020 may be affected. Getting your EU divorce recognised in England and Wales if you applied for it after this time it will also be subject to [new rules](#).

Speak to a lawyer or [Citizens Advice](#) to get specific advice about your case and any action you need to take.

European Commission guidance

In August 2020, the European Commission published [guidance](#) setting out the rules that will apply in EU Member States to cross-border family

³¹ Domicile and Matrimonial Proceedings Act 1973, Schedule 1 as amended by the [Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), Schedule paragraph 7(4)

³² Ministry of Justice, [UK-EU cross-border divorces](#), 12 January 2021

³³ Ibid

³⁴ [Explanatory Memorandum to the Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 2019 No. 519](#), paragraph 7.5

³⁵ Ministry of Justice, [UK-EU cross-border divorces](#), 12 January 2021

law disputes involving the UK.³⁶ This guidance states that,³⁷ for proceedings instituted after the end of the transition period, the courts in the EU Member States will determine their international jurisdiction:

- in matters falling within the scope of EU instruments in civil and commercial matters, on the basis of these EU instruments, including family law. If provided for by the instrument in question,³⁸ a court of a Member State may apply its national rules of international jurisdiction.
- in matters falling outside the scope of EU instruments, international jurisdiction will be governed by the national rules of the Member State in which a court has been seized. In some cases, international conventions, in particular conventions adopted by the Hague Conference on Private International Law, will replace EU law in the relationships between the EU and the United Kingdom provided that both the EU/EU Member States and the United Kingdom are parties to the convention (hereafter “relevant international conventions”).³⁹

The European Commission guidance also states that EU rules on enforcement will not apply to judicial decisions where the original proceedings are instituted after the end of the transition period. In some cases, it states, relevant international conventions will apply. The guidance provides the following example:

As regards divorce proceedings initiated in an EU Member State after the end of the transition period, the 1970 Hague Convention on the recognition of divorces and legal separations⁴⁰ deals with the matter at the international level. The United Kingdom is party to this Convention, but currently only 12 EU Member States are contracting parties.⁴¹

Where international conventions do not apply, “the recognition and enforcement of a UK judgment will be governed by the national rules of the Member State in which recognition/enforcement is sought”.⁴²

³⁶ European Commission, *Withdrawal of the United Kingdom and EU Rules in the field of civil justice and private international law*, 27 August 2020, REV2 – replaces the notice (REV1) dated 18 January 2019 and the Q&A document dated 11 April 2019

³⁷ Paragraph 1.2

³⁸ Footnote in quoted text: “E.g. Article 6(1) of Regulation (EU) 1215/2012”

³⁹ Footnote in quoted text: “Usually, these conventions are transposed into national law of each State that is party to the Convention”

⁴⁰ Footnote in quoted text: “<https://www.hcch.net/en/instruments/conventions/full-text/?cid=80>”

⁴¹ Footnote in quoted text: “See status table <https://www.hcch.net/en/instruments/conventions/status-table/?cid=80>”

⁴² European Commission, *Withdrawal of the United Kingdom and EU Rules in the field of civil justice and private international law*, 27 August 2020, paragraph 3.2

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