

Family law disputes involving EU after Brexit: guidance for legal professionals

Guidance for legal professionals on cross-border family law disputes (including divorce and child maintenance) after Brexit if the UK leaves the EU without a deal.

Details

This guidance is provided for the information of legal practitioners involved in family law in Northern Ireland and the EU in the event that the UK leaves the EU without a deal. It is not legal advice. It is not a complete statement of the law.

Practitioners should be aware that they may need to consider leading judgments from the UK courts and judgments from the Court of Justice of the European Union (CJEU) where relevant.

Members of the public involved in cross-border family law disputes should read the [guidance for the public](#).

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1. Divorce

1.1 Current law

Jurisdiction

The jurisdiction rules set out in Article 3 of Council Regulation 2201/2003, known as Brussels IIa, have been applied to all cases of legal separation and annulment (divorce etc.) in Northern Ireland whether or not the case has a cross border element.

The jurisdiction rules can mean that parties to a marriage may have standing to seise the court in a number of different Member States. Parallel proceedings are avoided by the lis pendens rule at Article 19, which states that the court second seised must stay its proceedings.

For [civil partnership dissolution](#) jurisdiction rules apply which broadly replicate the rules in Brussels IIa.

For further information, refer to the [Brussels IIa regulation](#)

Recognition of orders

Judgments on divorce are generally recognised in other Member States without any special procedure, under Article 21. This is subject to the exceptions contained in Article 22.

A party seeking or contesting recognition of orders for divorce etc. made in Northern Ireland is required to produce the documents detailed in Article 37 and in particular the Article 39 certificate at Annex I to Brussels IIa.

An interested party (in Northern Ireland 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 Proceedings (Northern Ireland) Rules 1996.

1.2 After Brexit if the UK leaves without a deal

Cases in Northern Ireland

Cases ongoing in Northern Ireland on exit day

Jurisdiction

Divorce proceedings ongoing in Northern Ireland on exit day will continue under the current law and rules of Brussels IIa.

Recognition of orders

If the UK leaves the EU without a deal, the court in Northern Ireland will continue to recognise divorces granted in EU Member States in the same way under Brussels IIa, if the recognition proceedings started ahead of exit.

New cases in Northern Ireland after exit day

Jurisdiction

Brussels IIa will no longer apply to cases in Northern Ireland. As retained EU law it is revoked, and jurisdictional rules for the court in Northern Ireland which replicate those in Brussels IIa have been inserted into Article 49 of the Matrimonial Causes (Northern Ireland) Order 1978, by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019. Sole domicile as a ground of divorce etc. jurisdiction has been added. The court in Northern Ireland will have a discretion to stay proceedings when there are proceedings continuing in another jurisdiction.

For civil partnership dissolution jurisdiction rules in the EU Exit Regulations continue to replicate the rules in Brussels IIa.

For further information, refer to the [Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) and the related Explanatory Memorandum.

Recognition of orders

The court in Northern Ireland will, after a no deal exit, 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.)

Cases in an EU Member State

The European Commission has issued [guidance](#) about how ongoing cases should be handled in EU Member States after Exit. Practitioners are encouraged to read this guidance and reflect on what it means for individual cases.

Cases ongoing in an EU Member State on exit day

Jurisdiction

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

Recognition of orders

The European Commission has given guidance to the EU-27 that orders made in the UK before exit day 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 exit day 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.

New cases in an EU Member State after exit day

Jurisdiction

There is no international law on which court has jurisdiction for divorce etc. other than Brussels IIa. 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 exit day will be governed by the national rules of the Member State of the court to which application is made.

Recognition of orders

The recognition in an EU Member State of a divorce order (decree absolute) granted in Northern Ireland after exit day 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.

2. Maintenance

2.1 Current law

Jurisdiction

The court in Northern Ireland currently applies the rules in Chapter II of the [EU Maintenance Regulation 4/2009](#) to decide if it has jurisdiction to hear a maintenance case.

Recognition and enforcement of decisions

A maintenance decision made in Northern Ireland that is to be recognised and enforced in another EU Member State must be recognised and must have a declaration of enforceability (registration for enforcement) before it can be enforced there. It should be accompanied by the documents required under Article 28, subject to the exceptions in Article 29.

A maintenance decision made in another EU Member State (except Denmark) that is to be recognised and enforced in Northern Ireland does not need to be registered for enforcement. It should be accompanied by the documents required under Article 20.

2.2 After Brexit if the UK leaves without a deal

Cases in Northern Ireland

Cases ongoing in Northern Ireland after exit day

Jurisdiction

The no deal exit legislation has saving and transitional provisions to the effect that cases which have started under the EU rules in the Maintenance Regulation will continue under those rules.

Recognition and enforcement of decisions

A maintenance decision made in an EU Member State before UK exit will be recognised in the UK under the rules of the Maintenance Regulation if an application for its recognition is received before exit day, even if the UK leaves the EU without a deal. That decision will then be enforceable under the EU rules after exit day in Northern Ireland, even if the application for enforcement is received after exit day. Decisions incoming from Denmark will require registration for enforcement.

Maintenance decisions that have been enforced in the UK will continue in payment in the event of a no deal exit.

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

New cases starting in Northern Ireland after exit day

Jurisdiction

The EU Maintenance Regulation 4/2009 will be revoked by no deal exit legislation. For cases starting after exit, the court in Northern Ireland will decide if it has jurisdiction using the rules in domestic law, unless parties have already made a choice of law agreement. These rules are different depending on the type of maintenance case before the court.

Recognition of decisions

In the event of no deal UK exit, the UK will use the rules of the 2007 Hague Convention on The international Recovery of Child Support and Other Forms of Family Maintenance with other States Party, which include all EU Member States except Denmark. The 1973 Hague Maintenance Enforcement Convention will continue to operate between the UK and Denmark.

For further information, refer to the [full 2007 Hague convention](#)

Cases in an EU Member State

The European Commission has issued [guidance](#) about how ongoing cases should be handled in EU Member States after Exit. Practitioners are encouraged to read this guidance and reflect on what it means for individual cases.

Cases ongoing in an EU Member State on exit day

According to the guidance from the European Commission, legal proceedings involving “an individual domiciled in the UK” underway in EU Member States on exit day using the EU rules will be completed under the current EU rules.

Jurisdiction

The European Commission has given guidance to the EU-27 that for proceedings underway in EU Member States on exit day, where the respondent is domiciled in the UK, the jurisdiction rules of the EU Maintenance Regulation will continue to apply.

Recognition of decisions

The guidance from the European Commission states that a decision from the UK must have been registered (i.e. a “declaration of enforceability” must have been obtained) in the relevant EU Member State before exit day, for the EU Member State to enforce it under the EU rules.

It is not clear whether or not maintenance decisions from the UK which have been recognised in an EU Member State, but have not reached the stage of having obtained a declaration of enforceability under EU rules, will be able to continue to enforcement under the rules of the 2007 Hague Convention, or whether the parties will need to submit a separate declaration under the 2007 Hague Convention after Exit. Parties may wish to consider seeking local legal advice in the relevant EU Member State if possible.

New cases starting in an EU Member State after exit day

Jurisdiction

The guidance from the European Commission states that where proceedings involve a UK domiciled defendant, unless an EU instrument sets out the rules of jurisdiction with regard to third countries, international jurisdiction will be governed by the national rules of the Member State in which the court is seized. To find out the law the court will apply with the UK after no deal exit, individuals should seek local legal advice if possible.

Recognition of decisions

The guidance from the European Commission states that in some instances international conventions will apply provided that both the EU Member States and

the United Kingdom are party to the convention. All EU Member States except Denmark are party to the 2007 Hague Maintenance Convention so this will enable the recognition of UK maintenance decisions in EU Member States after Exit.

Choice of court agreements within a Maintenance case after exit day

In Northern Ireland

The court in Northern Ireland will continue to recognise choice of court agreements in maintenance cases agreed in writing between all parties which satisfy the relevant conditions, even if the case is issued after exit day.

In EU Member States

There is no guarantee that the courts of EU Member States will accept choice of court agreements from Northern Ireland after exit day.

Further information

Scope of the 2007 Hague Maintenance Convention

The UK will operate the 2007 Hague Convention as soon as possible after the UK leaves the EU in the event of no deal exit both for new cases and for payments from before exit for the benefit of a person under 21, with EU Member States except Denmark. The UK has ratified the 2007 Hague Convention with the same declarations and reservations as before and the same scope as that applied by the EU, including spousal maintenance. The UK will in future consider wider application.

For further information, refer to the [2007 Hague convention](#)

Terminology differences between the 2007 Hague Maintenance Convention and the EU Maintenance Regulation

The EU Maintenance Regulation 4/2009 provides for the UK (and Ireland) to read “nationality” as “domicile”. The 2007 Hague Convention refers only to nationality.

The 2007 Hague Convention provides for the recognition and enforcement of maintenance decisions where the court which made the decision had jurisdiction for

divorce, except if that was based on the nationality of one spouse. Therefore, where the court's jurisdiction for the divorce relies on sole domicile, not nationality, it should be possible for any maintenance decision to be recognised and enforced under the 2007 Hague Convention.

3. International parental child abduction

3.1 Current law

The main provisions of the 1980 Hague Convention on the Civil Aspects of International Child Abduction are incorporated into the law of the UK jurisdictions by the Child Abduction and Custody Act 1985. All EU Member States are party to the 1980 Hague Convention and use it with the UK. This provides a summary procedure for children wrongfully removed or retained away from their country of habitual residence to be returned there, so that long-term decisions about the future of the child can be made. (Abduction includes both wrongful removal and wrongful retention.)

Members of the public whose child has been abducted out of Northern Ireland should contact the Central Authority for Northern Ireland for information on what action to take. (E-mail InternationalChildAbduction@courtsni.gsi.gov.uk Tel: 028 9072 8808 or 028 9072 8819) If the member of the public believes their child is at risk of abduction in future from any part of the UK they should contact the charity Reunite International Child Abduction Centre for advice and information.

If they believe the child is being wrongfully removed from the UK and is on their way out of the country they should go at once to their nearest police station and ask for warning list action. They should also contact Reunite International Child Abduction Centre.

For further information refer to <https://www.justice-ni.gov.uk/articles/child-abduction-matters> and to the [Child Abduction and Custardy Act 1985](#) Contact Reunite International on 0116 2556234 or www.reunite.org

3.2 After Brexit if the UK leaves without a deal

The UK and EU Member States will continue to use the 1980 Hague Convention in international child abduction cases between them.

4. Children cases (parental responsibility)

Note: In EU terms parental responsibility includes residence and contact.

4.1 Current law

Jurisdiction

Article 8 of Brussels IIa provides that jurisdiction in children cases generally rests with the court of the country of the child's habitual residence. Habitual residence is a question of fact which requires consideration of a number of factors. There are also other grounds of jurisdiction which may sometimes be relied upon. For example, under Article 12, the court with jurisdiction where there are divorce etc. proceedings also has jurisdiction for proceedings about a child when at least one spouse has parental responsibility for that child and the relevant people agree the court should have jurisdiction.

For further information, refer to the [Brussels IIa regulation](#)

Recognition of orders

The general rule is that judgments on parental responsibility shall be recognised in other Member States without any special procedure, under Article 21. This is subject to the exceptions contained in Article 23.

An order made in Northern Ireland is recognised and enforced in other EU Member States when accompanied by the relevant certificate, Annex II to Brussels IIa for parental responsibility, Annex III for rights of access, Annex IV for return of the child.

An order made in another EU MS is recognised and enforced in Northern Ireland when accompanied by the relevant certificate as above.

4.2 After Brexit if the UK leaves without a deal

If the case is in Northern Ireland

Cases ongoing in Northern Ireland on exit day

Jurisdiction

Domestic no deal legislation provides saving and transitional rules for ongoing parental responsibility cases which will come into force if the UK leaves the EU with no deal. These allow parental responsibility cases which began under EU rules in the courts of Northern Ireland before exit to continue under those rules in Northern Ireland. For further detail refer to, the [Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)

Recognition of orders

If an application for recognition of a parental responsibility decision made in an EU Member State is received in Northern Ireland before exit day, the order will be recognised under EU rules and will continue to be recognised after exit day.

New cases in Northern Ireland after exit day

Jurisdiction

Brussels IIa will no longer apply in Northern Ireland after exit day. As retained EU law it is revoked by the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019.

The court will instead make its decision on whether it has jurisdiction to hear private law cross border children cases in accordance with the rules of the 1996 Hague Protection of Children Convention.

Recognition of orders

The No Deal legislation in The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 makes provision to enable the court in Northern Ireland to recognise and enforce orders from EU Member States.

If the case is in an EU Member State

The European Commission has issued [guidance](#) about how ongoing cases should be handled in EU Member States after Exit. Practitioners are encouraged to read this guidance and reflect on what it means for individual cases.

Cases ongoing in an EU Member State on exit day

Jurisdiction

The European Commission has given guidance to the EU-27 that for proceedings pending in EU Member States on exit day, where the respondent is domiciled in the UK, the jurisdiction rules of Brussels Ila will continue to apply.

When the UK leaves the EU 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 exit day will be governed by the national rules of the Member State of the court to which application is made.

Recognition of orders

The European Commission has given [guidance](#) to the EU-27 that orders made in the UK before exit day 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 exit day 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.

Transfer of cases after exit day

The provisions of Brussels IIa could prevent a court in an EU Member State using the 1996 Hague Convention to transfer jurisdiction in children cases to the UK after no deal exit. The legal position on transfer of cases is not clear. Parties may wish to consider seeking local legal advice in the relevant EU Member State if possible.

New cases in an EU Member State after exit day

Jurisdiction

The guidance from the European Commission states that where proceedings involve a UK domiciled defendant, unless an EU instrument sets out the rules of jurisdiction with regard to third countries, international jurisdiction will be governed by the national rules of the Member State in which the court is seized.

All EU Member States are party to the 1996 Hague Protection of Children Convention so it is expected that the court of an EU Member State in a case with a UK connection will apply the rules of the 1996 Hague Convention to decide whether it has jurisdiction in children cases.

For further information, refer to the [1996 Hague convention](#)

Recognition of orders

The guidance from the European Commission states that in some instances international conventions will apply provided that both the EU Member States and the United Kingdom are party to the convention. Recognition will be under the rules of the 1996 Hague Convention.

5. Placement of children

5.1 Current law

Jurisdiction

Under Brussels IIa, the court hearing public law care proceedings will normally be the court of the country of the child's habitual residence.

Current procedure

If the health and social care trust wishes to propose to the court that the child be placed with a family member in another Member State, trusts are required under the rules in the Brussels IIa Regulation to seek and obtain prior consent from the competent authority in the EU country where they wish to place the child, in cases where that authority is involved in domestic placements.

For further information, refer to: the full [Brussels IIa regulation](#) and the Family Proceedings (Northern Ireland) Rules 1996

5.2 After Brexit if the UK leaves without a deal

Jurisdiction

Under the 1996 Hague Convention, the court hearing public law care proceedings will normally be the court of the country of the child's habitual residence.

New procedure for EU Member States, current for non-EU countries

If the UK leaves the EU with no deal, social welfare authorities in EU Member States will use the rules in the 1996 Hague Protection of Children Convention on placements; under these rules they will need to seek and obtain consent to the placement in every case.