Handling civil legal cases that involve EU countries if there's no Brexit deal

Summary
How the rules for civil, commercial, insolvency and family law cases involving EU countries would change if the UK leaves the EU with 'no deal'.

Detail
If the UK leaves the EU in March 2019 with 'no deal' we would no longer be a part of the EU's civil judicial cooperation framework. Find out how this would change the rules for civil, commercial and family law cases involving EU countries, including:

- civil and commercial judicial cooperation
- cross-border insolvency cooperation
- family law cooperation

A scenario in which the UK leaves the EU without agreement (a 'no deal' scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome.

Negotiations are progressing well and both we and the EU continue to work hard to seek a positive deal. However, it's our duty as a responsible government to prepare for all eventualities, including 'no deal', until we can be certain of the outcome of those negotiations.

For two years, the government has been implementing a significant programme of work to ensure the UK will be ready from day 1 in all scenarios, including a potential 'no deal' outcome in March 2019.

It has always been the case that as we get nearer to March 2019, preparations for a 'no deal' scenario would have to be accelerated. Such an acceleration does not reflect an increased likelihood of a 'no deal' outcome. Rather it is about ensuring our plans are in place in the unlikely scenario that they need to be relied upon.

This series of technical notices sets out information to allow businesses and citizens to understand what they would need to do in a 'no deal' scenario, so they can make informed plans and preparations.

This guidance is part of that series.

Also included is an [overarching framing notice](https://www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario/) explaining the government's overarching approach to preparing the UK for this outcome in order to minimise disruption and ensure a smooth and orderly exit in all scenarios.

We are working with the devolved administrations on technical notices and we will continue to do so as plans develop.

Before 29 March 2019

Currently, the UK applies EU rules to determine:

- which country's courts hear a civil, commercial or family law case raising cross-border issues with other EU countries (jurisdiction)
- which country's laws apply (applicable law)
- how a judgment obtained in one EU country should be recognised and enforced in another (recognition and enforcement)
- how cross-border legal procedural matters are handled (such as taking evidence in one country for use in proceedings in another)

A number of different EU instruments make up the current system. These cover rules for civil and commercial disputes, including insolvency, and for family law matters. We also apply a number of international agreements because of our EU membership, which enable elements of civil judicial cooperation with non-EU countries.

A list of these instruments and international agreements can be found in the list of [EU civil judicial instruments and international agreements](#bookmark=id.bso3aximbcr3).

These instruments and agreements currently operate in each of the UK's separate and distinct legal systems.

- England and Wales, which operates a common law system
- Scotland, which operates Scots law, a mixed system
- Northern Ireland, which also operates a common law system

After March 2019 if there's no deal

In the unlikely event of 'no deal', there would be no agreed EU framework for ongoing civil judicial cooperation between the UK and EU countries. Most of the EU rules operate on the basis of reciprocity between EU countries. If the UK continued to apply the rules unilaterally after exit, the UK's status as a third country would mean that EU countries would not consider the UK to be covered by these rules. As a result, UK citizens, businesses and families would not benefit from these rules.

Because of this loss of reciprocity, in the event of a no-deal scenario, we would repeal most of the existing civil judicial cooperation rules and instead use the domestic rules which each UK legal system currently applies in relation to non-EU countries. In some specific areas, detailed below, we would retain elements of the current EU rules, where they either do not rely on reciprocity to operate or where they currently form the basis for our existing domestic or international rules.

We would also continue to apply existing international agreements, such as the [Hague Conventions](https://www.hcch.net/en/states/hcch-members/details1/?sid=75), which in many areas provide alternative rules covering the same areas as the EU-specific instruments, although they are not always as comprehensive. Where the UK currently participates in Hague Conventions because of our EU membership (namely the 2005 Hague Convention on Choice of Court Agreements and the 2007 Hague Convention on Maintenance), we would make the necessary arrangements to continue to participate in these international agreements in our own right.

Any party to a cross-border legal dispute, including businesses, consumers and families, would need to consider the effect that these changes would have on any existing or future cases involving parties in EU countries. Where appropriate you may wish to seek professional legal advice on the implications of these changes for your individual circumstances.

Civil and commercial judicial cooperation

In the absence of a deal with the EU, the following rules would be repealed for all parts of the UK:

- Brussels Ia: which provides rules to decide where a case should be heard when it raises cross-border issues between the UK and other EU countries, and the recognition and enforcement of civil and commercial judgments between EU countries
- The Enforcement Order, Order for Payment and Small Claims Regulations: which establish EU procedures for dealing with, respectively, uncontested debts and claims worth less than EUR5,000
- The EU/Denmark Agreement: which provides rules to decide where a case would be heard when it raises cross-border issues between Denmark and EU countries, and the recognition and enforcement of civil and commercial judgments between the EU and Denmark
- The Lugano Convention: which is the basis of our civil judicial relationship with Norway, Iceland and Switzerland: This would not prevent us applying to re-join the Lugano Convention in our own right at a later date

For rules in these areas, we would instead revert to the existing domestic common law and statutory rules, which currently apply in cross border cases concerning the rest of the world, to govern our relationship with the remaining EU countries (and Iceland, Norway and Switzerland).

Businesses, individuals and legal practitioners would need to consider how these rules interact with the domestic rules of relevant EU countries to determine how jurisdiction in

cross-border disputes should be established and whether any judgments should be recognised and enforced.

In certain cases, the interaction between these rules may not be clear and certain countries may not recognise judgments from UK courts. Businesses and individuals may wish to take legal advice about how these changes may affect your individual circumstances.

All parts of the UK would retain the Rome I and Rome II rules on applicable law in contractual and non-contractual matters, which generally do not rely on reciprocity to operate. This would ensure that businesses and individuals could generally continue to use the same rules as at present to determine which law would apply in cross-border disputes.

In the event of 'no deal', we would take the necessary steps to formally re-join the 2005 Hague Convention on Choice of Court Agreements in our own right (we currently participate because of our EU membership). It is anticipated that the convention would come in to force across the UK by 1 April 2019. Where appropriate, individuals and businesses would need to consider what this would mean for any existing choice of court agreements made under either the Brussels regime or the 2005 Hague Convention, including the implications of any gap in coverage by the 2005 Hague Convention between 29 March and 1 April 2019.

Cross-border insolvency cooperation

The majority of the Insolvency Regulation, which covers the jurisdictional rules, applicable law and recognition of cross-border insolvency proceedings, would be repealed in all parts of the UK. We would retain the EU rules that provide for the UK courts to have jurisdiction where a company or individual is based in the UK, and the law will ensure that insolvency proceedings can continue to be opened in those circumstances. But after exit, the EU Insolvency Regulation tests would no longer restrict the opening of proceedings, and so it would also be possible to open insolvency proceedings under any of the tests set out in our domestic UK law, regardless of whether (or where) the debtor is based elsewhere in Europe.

UK insolvency practitioners would need to make applications under an EU country's domestic law in order to have UK orders recognised there. In certain circumstances, some EU countries may not recognise UK insolvency proceedings, for example if that would prevent creditors from taking action against the assets held in that country. Where appropriate, insolvency practitioners may wish to take professional advice on the prospects of successfully obtaining recognition for a UK insolvency order in an EU country. EU insolvency proceedings and judgments would no longer be recognisable in the UK under the EU Insolvency Regulation, but may be recognised under the

UNCITRAL Model Law on Cross-Border Insolvency, which already forms part of the UK's domestic rules on recognising foreign insolvencies.

Family law cooperation

In family law cooperation, the key EU regulations are Brussels IIa (which covers jurisdictional rules in matrimonial and parental responsibility matters, the recognition and enforcement of related judgments and supplementary rules on child abduction) and the Maintenance Regulation (which covers jurisdictional rules for maintenance decisions and the recognition and enforcement of related judgments).

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 cooperation

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.

In child abduction cases, our participation in the 1980 Hague Convention means that most of the measures we currently operate with EU countries would not change. We will however repeal the child abduction override provisions contained within Brussels IIa. These rules (which, in certain circumstances, allow an order from a court of an EU Member State to override an order made by another court not to return a child) are based on reciprocity and would no longer operate effectively if the UK leaves the EU with 'no deal'.

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). It is anticipated that it would come into force by 1 April 2019. Parties would need to consider the implications for any new maintenance applications made during the gap in coverage between 29 March and 1 April 2019.

While there are some differences between the EU and Hague rules in these areas, the Hague Conventions provide an effective alternative to the EU rules. Families and

individuals may wish to take legal advice as to how these changes may relate to your circumstances.

Family law cooperation without corresponding Hague Conventions

In some areas of family cooperation there are no relevant Hague Conventions to fall back on. In most of these cases, we would repeal the EU rules and proceed as follows.

Currently divorce jurisdiction in UK is primarily based on the Brussels IIa rules for all cases. 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.

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.

The impact of these changes on individual families would vary dependent on their circumstances and, if appropriate, you may wish to seek legal advice on what steps to take.

EU instruments covering both civil and family matters

We would also repeal the EU Service Regulation and the Taking of Evidence Regulation, which both rely on reciprocity to operate. However, we would apply the equivalent Hague Conventions in this area, to which the vast majority of EU countries are party. Finally, we would repeal the legislation implementing the Mediation Directive and the Legal Aid Directive.

The effect on ongoing civil and family cases

We will seek to provide legal certainty for businesses, families and individuals who are involved in ongoing cases on exit day. Broadly speaking, cases ongoing on exit day will continue to proceed under the current rules. However, we cannot guarantee that EU courts will follow the same principle, nor that EU courts will accept or recognise any judgments stemming from these cases. Individuals with cases in progress on 29 March are encouraged to seek legal advice on how this may affect them.

More information

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

It is part of the government's ongoing programme of planning for all possible outcomes. We expect to negotiate a successful deal with the EU.

EU civil judicial instruments and international agreements

The UK applies a number of different EU instruments which make up our current civil judicial system. These cover rules for civil and commercial disputes, including insolvency, and for family law matters.

- Brussels Ia Regulation (1215/2012): rules which determine which EU country's courts hear cases in civil and commercial matters (jurisdiction); and rules which enable judgments to be recognised and enforced across borders
- Brussels IIa Regulation (2201/2003): rules about which EU country's courts should decide matrimonial and parental responsibility matters; the recognition and enforcement of judgments; administrative cooperation; and cooperation in child abduction cases
- Maintenance Regulation (4/2009): rules about which EU country's courts should make decisions in maintenance matters; recognition and enforcement of child, spousal and other forms of family maintenance decisions; and administrative cooperation and assistance
- Insolvency Regulation (2015/848): rules about jurisdiction, applicable law and recognition of insolvency proceedings in cross-border insolvencies

- Service of Documents Regulation (1393/2007) and Taking of Evidence Regulation (1206/2001): rules to facilitate the service of legal documents in civil and family judicial proceedings involving parties in more than one EU country and rules about cooperation between the courts of EU countries in taking of evidence in civil and commercial judicial proceedings
- Rome I Regulation (593/2008) and Rome II Regulation (864/2007): rules which determine the law which is applicable to cross-border contractual and non-contractual disputes
- Civil Protection Measures Regulation (606/2013): rules ensuring the cross-border recognition and enforcement of civil protection measures
- Small Claims Procedure Regulation (861/2007), European Enforcement Order Regulation (805/2004) and European Order for Payment Procedure Regulation (1896/2006): rules which establish streamlined procedures for determining small claims and enforcing uncontested judgments and debts
- Cross-border Mediation Directive (2008/52): rules aimed at promoting the amicable settlement of cross-border disputes through mediation and Legal Aid Directive (2002/8): rules to cover the grant of legal aid in cross-border disputes

We also apply the following international agreements because of our EU membership:

- EU/Denmark 2005 Agreement: this extends the Brussels Ia rules to Denmark
- Lugano Convention 2007: this deals with jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; it applies between EU countries and Switzerland, Norway and Iceland (European Free Trade Association Member States)
- 2005 Hague Convention on Choice of Court Agreements: provides rules to ensure the effectiveness of exclusive choice of court agreements between parties to international commercial transactions
- 2007 Hague Maintenance Convention: provides rules for the recognition and enforcement of child support and other forms of family maintenance and for administrative cooperation between contracting states

The latter three international agreements do not currently cover our relationship with the EU, but rather enable elements of international cooperation with non-EU countries.