

Remain in France Together

Information sheet



Civil Proceedings

Brexit is often compared to a divorce, This information sheet discusses how Brexit will actually impact civil legal proceedings such as divorce and other family law matters

There is still considerable uncertainty around these issues so all we can do is highlight some of the areas affected.

Background

Boris Johnson once lamented that the ECJ “*adjudicates in divorce law for Heaven’s sake ... nothing to do with the single market*”! While that may have won a few more votes for leave, the UK Government is now obliged to admit that cross-border divorce will present problems after Brexit.

The UK Government released a paper in August 2017 on cross-border civil disputes (“Providing a cross-border civil judicial cooperation framework”) in response to the European Commission’s “Position paper on Judicial Cooperation in Civil and Commercial matters”.

It subsequently published, in June 2018, an outline of what it was seeking in the negotiations [EU Commission Negotiation Document on Judicial Cooperation](#)¹.

The UK basically wanted reciprocal arrangements to be maintained in the context of a negotiated withdrawal. Whether this is now achievable remains to be seen.

The matters discussed here concern exclusively civil proceedings, i.e. family and commercial matters (not criminal proceedings, where certain EU safeguards and mechanisms will sadly no longer be binding on the UK), applicable to British or EU citizens involved in cross-border (UK/EU27) cases.

Current information sources

On 23 September 2019 the UK Ministry of Justice posted a collection of documents on “Family law disputes involving EU after Brexit: guidance for public”. This information does not appear to be publicly available any longer although the version of the guidance for professionals is available on the Scottish government website. The Scottish government also has a webpage for the public³.

The French authorities have also added the following to their Brexit pages: “Legal Rulings” (in English) [French Government Brexit Pages in English](#)⁴



Remain in France Together

Information sheet



What arrangements still apply?

Outside the EU, the UK will still be a party to certain international arrangements, such as the Hague Conference on Private International Law (which has produced conventions for example on international child abduction and choice of court agreements) and the United Nations Commission on International Trade Law.

It wants to retain participation in the Lugano Convention, which is an EU/EEA instrument but open to other parties.

What does the Withdrawal Agreement say?

In August 2017 the UK Government concluded: *"we are seeking a close and comprehensive framework of civil judicial cooperation with the EU ... on a reciprocal basis, which would mirror closely the current EU system"*.

That cooperation was ultimately reflected in the "separation clauses" part of the Withdrawal Agreement under "Ongoing judicial cooperation in civil and commercial matters" (Articles 66-69), maintaining various EU arrangements but only in respect of the transition period.

It was acknowledged by both sides that these matters would require further agreement in the context of the future relationship, even in a deal scenario.

What about a divorce already in progress?

Any ongoing divorce proceedings (involving a UK and EU national/resident) will continue under the current rules. But even if a divorce is final before the end of the transition period and needs to be recognised in the EU27 the advice is that "you will need to take steps to make sure your divorce is recognised".

For child maintenance and arrangement orders, likewise, steps must be taken if a decision needs to be recognised and enforced in a EU State.

After the transition period

While ongoing cases remain unchanged in the UK (but not necessarily in the EU), post-Brexit cases may be subject to different procedures, in particular to secure enforcement in the EU27.

The UK Government guidance advises those concerned to contact the relevant bodies but is lacking in detail about what the future procedures will be, leaving significant uncertainty.

The French Government information in this area (prepared when they were still comparing a deal/no deal no deal scenario) announces starkly *"European instruments relating to judicial cooperation in family matters will no longer be applicable; the free circulation of judicial decisions, the service of judicial and extrajudicial documents, and taking of evidence, will no longer be governed by EU regulations"*.



Remain in France Together

Information sheet



For example, the recognition of civil decisions is covered by the Brussels Regulation, which will cease to apply in the UK, although there is an existing bilateral agreement.

It points out that the UK could still ratify the Lugano Convention on jurisdiction (see above). In various areas, such as family matters and mutual legal assistance, the guidance points out that some Hague Conventions will apply, but these *“do not allow direct cooperation in the same way as European instruments, and therefore lead to longer timeframes”*.

UK civil decisions will no longer be subject to the simplified enforceability procedure in France. Future bilateral arrangements are not excluded of course, even in a no deal scenario, but these are bound to take time to set up.

What next

If no further agreement is ratified, the situation will not have evolved much since Professor Steve Peers wrote a [blog post on the UK’s position](#)⁵ in August 2017.

Basically, the UK wanted to maintain a raft of cross-border arrangements but not be subject to ECJ jurisdiction. As Peers wrote *“It’s a bit like tearing down and rebuilding a house, in order to change one brick”*.

That just about summarises Brexit as a whole, but one must never overlook the concrete effect of this folly on individuals embroiled in very sensitive family and other civil cases.



Remain in France Together

Information sheet



References

The following links all point to official information sources:

1. Framework for the UK-EU partnership: Civil judicial cooperation: explains the UK Government's vision for the future UK-EU Partnership
<https://www.gov.uk/government/publications/framework-for-the-uk-eu-partnership-judicial-civil-cooperation>
2. Scottish government publication. Family law disputes involving EU after Brexit: guidance for legal professionals.
<https://www.gov.scot/publications/family-law-disputes-involving-eu-brexit-guidance-legal-professionals/>
3. Scottish government web page on Family, civil and commercial disputes involving EU countries after Brexit.
<https://www.mygov.scot/brexit-family-civil-disputes/>
4. French government information on Brexit
https://brexit.gouv.fr/sites/brexit/accueil/vous-etes-britannique-en/decisions-de-justice-en.html?fbclid=IwAR2_s_0q_ba4vF3Zcpog2Oysdy2KXcZ8d9if45Q8E8_XaOoElaiKZBh9zA

The following is not an official source but it is an analysis by a respected academic who is a Professor of EU and Human Rights Law.

5. Cross-border civil litigation after Brexit: analysis of the UK government's proposals.
<http://eulawanalysis.blogspot.com/2017/08/cross-border-civil-litigation-after.html>

Disclaimer

This is one of a series of guides and information sheets produced by Remain in France Together (RIFT). RIFT is a statutory association governed by French law and managed and run by volunteers. It exists to uphold the rights of British citizens living in, or moving to, France affected by the UK withdrawal from the EU.

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The main source of information to keep up-to-date with developments in citizens' rights is our website <https://www.remaininfrance.fr/>

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