

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT JURISDICTION AND JUDGMENTS  
(FAMILY) (AMENDMENT ETC.) (EU EXIT)  
REGULATIONS 2019

DRAFT CIVIL PARTNERSHIP AND MARRIAGE  
(SAME SEX COUPLES) (JURISDICTION AND  
JUDGMENTS) (AMENDMENT ETC.) (EU EXIT)  
REGULATIONS 2019

*Wednesday 30 January 2019*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Sunday 3 February 2019**

© Parliamentary Copyright House of Commons 2019

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chair:* SIR DAVID AMESS

- |  |   |
|--|---|
| † Black, Mhairi ( <i>Paisley and Renfrewshire South</i> )<br>(SNP)               | † McMorris, Anna ( <i>Cardiff North</i> ) (Lab)           |
| † Duffield, Rosie ( <i>Canterbury</i> ) (Lab)                                    | Malhotra, Seema ( <i>Feltham and Heston</i> ) (Lab/Co-op) |
| † Frazer, Lucy ( <i>Parliamentary Under-Secretary of<br/>State for Justice</i> ) | † Menzies, Mark ( <i>Fylde</i> ) (Con)                    |
| † Goodwill, Mr Robert ( <i>Scarborough and Whitby</i> )<br>(Con)                 | † Milling, Amanda ( <i>Cannock Chase</i> ) (Con)          |
| † Hair, Kirstene ( <i>Angus</i> ) (Con)  | † Peacock, Stephanie ( <i>Barnsley East</i> ) (Lab)       |
| † Herbert, Nick ( <i>Arundel and South Downs</i> ) (Con)                         | † Percy, Andrew ( <i>Brigg and Goole</i> ) (Con)          |
| Lucas, Ian C. ( <i>Wrexham</i> ) (Lab)   | † Qureshi, Yasmin ( <i>Bolton South East</i> ) (Lab)      |
| † McGinn, Conor ( <i>St Helens North</i> ) (Lab)                                 | † Wragg, Mr William ( <i>Hazel Grove</i> ) (Con)          |
| † Maclean, Rachel ( <i>Redditch</i> ) (Con)                                      |   |
|  | Medha Bhasin, <i>Committee Clerk</i>                      |
|  | † <b>attended the Committee</b>                           |

# Ninth Delegated Legislation Committee

Wednesday 30 January 2019

[SIR DAVID AMESS *in the Chair*]

## Draft Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019

2.30 pm

**The Parliamentary Under-Secretary of State for Justice (Lucy Frazer):** I beg to move,

That the Committee has considered the draft Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019.

**The Chair:** With this it will be convenient to consider the draft Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) (Amendment etc.) (EU Exit) Regulations 2019.

**Lucy Frazer:** As always, Sir David, it is a pleasure to serve under your chairmanship. The two draft instruments form part of the Government's preparations for the event that the UK should leave the EU without a deal. They relate solely to our no-deal preparations.

The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations relate to the arrangements in family law that will apply when we leave the EU. They deal with the rules that determine which court should hear a family law matter, and they cover co-operation between the courts in the recognition of the judgments of EU courts. They will repeal the EU rules, because the reciprocity of those rules across member states will be lost when the UK leaves the EU; EU member states will no longer apply them to cases that involve the UK. The relevant matters will be governed instead by existing international conventions and a combination of new and pre-EU domestic rules.

Before I go into the detail of the draft regulations, it may be helpful if I outline the existing arrangements in the EU in respect of the law on this area. There are two applicable EU regulations: the Brussels IIa regulation and the maintenance regulation. The Brussels IIa regulation provides the rules that determine which court has the jurisdiction to hear various family cases—for example, whether a divorce hearing in a case with a cross-border element should take place in the UK or in another EU member state. The regulation covers divorce and matrimonial disputes; parental responsibility disputes, such as disputes between parents over the residence of their child or contact with their child; and care proceedings. It also provides for the recognition and enforcement of one member state's judgment in all member states. Similarly, the maintenance regulation sets out rules about which EU member states' courts have jurisdiction in cross-border cases that concern family maintenance, and about the recognition and enforcement of judgments.

What will change if we leave the EU without a deal? Without an agreement to cover these matters, the Brussels IIa regulation and the maintenance regulation will no longer operate effectively between the UK and the EU. Even if the UK tried to apply those rules after exit,

the EU27 would no longer be obliged to apply them in relation to the UK because we would be a third country. For example, they would not be required under the regulations to enforce or recognise decisions of courts in the UK. In the light of those circumstances, the draft regulations will revoke the Brussels IIa regulation and the maintenance regulation, but that does not mean that we will be left without rules on international co-operation.

The UK is a contracting state to a number of Hague conventions in the field of family law that cover many of the same areas as the Brussels IIa regulation and the maintenance regulation. In particular, the 1996 Hague convention covers similar ground to the Brussels IIa regulation in respect of jurisdiction, recognition and enforcement of judgments and co-operation between authorities in matters of parental responsibility. All EU member states are bound by that convention: the UK and all EU member states are contracting parties, so it applies between us and each of them.

**Mhairi Black (Paisley and Renfrewshire South) (SNP):** I am confused by paragraph 7.3 of the explanatory memorandum to the draft family regulations, which states that the

"instrument amends domestic law so that the 1973 Hague Convention...will again operate between the UK and those EU Member States party to them where appropriate."

Are all EU states party to the convention, or are there cases in which certain countries are not?

**Lucy Frazer:** There are the Hague conventions of 1970 and 1996. All EU member states are party to the 1996 convention. In addition, we have the 2007 Hague convention, which contains similar recognition and enforcement rules and provisions on co-operation between authorities as those in the maintenance regulation, and which applies to all EU member states except Denmark.

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.

**Mhairi Black:** I am grateful to the Minister for indulging me. To be absolutely clear, does this mean that there will be some EU states with which we will not have a framework for the recovery of such payments, or is it a blanket framework that every EU country will be under?

**Lucy Frazer:** I understand that all member states sign up to the Hague convention. In fact, the EU signs up to the Hague convention, and therefore the member states are signed up as parties under the umbrella of the EU.

There are a number of additional matters to raise. In relation to the first statutory instrument, we are very grateful to family law practitioners for raising two issues about maintenance that we are urgently considering. Both are technical and complex. The first relates to jurisdiction and remedies under the Children Act 1989 and whether, in returning to the pre-EU position, the instrument has inadvertently narrowed the jurisdiction of the English and Welsh courts and the type of financial awards they can make. The Government's position is that the current position is appropriate, and there is no intention to reduce or narrow the provision available to families. The Government will bring forward a further SI to address that.

The second issue relates to whether, post exit, an English or Welsh court will have the power to rule on pension-sharing arrangements in cases where a person does not have a connection to England or Wales but is unable to bring the claim elsewhere. Although only a small number of cases will be affected, we will consider whether that issue should be addressed.

I shall now deal with the draft Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) (Amendment etc.) (EU Exit) Regulations 2019. The UK Government's position has always been that we will apply the same rules on jurisdiction, recognition and enforcement to same-sex divorce and civil partnership dissolution as we do to opposite-sex divorce.

As Brussels IIa does not apply in relation either to civil partnership dissolution or to divorce between same-sex couples, our domestic law mirrors the relevant provision for those cases. It is entirely appropriate to take a similar approach to determining jurisdiction, recognition and enforcement as that taken for opposite-sex couples. That is what the regulations will do.

**Mr Robert Goodwill** (Scarborough and Whitby) (Con): Many of us in this place would like civil partnerships to be extended to different-sex couples. Would further changes to the regulations be required for their provisions to apply in such cases, or would that happen automatically if we extended civil partnerships to non-same sex couples?

**Lucy Frazer:** That is a matter that we would consider at the appropriate time, but my right hon. Friend makes a very good point. We are looking at those issues and are committed to them.

In conclusion, without a deal in place, there would be no overarching framework between the UK and the EU, as there is under existing mechanisms. We are therefore ensuring that, if we leave without a deal, our legal system will continue to work effectively for our citizens through the international arrangements we have in place and by going back to common law. If Parliament approves the withdrawal agreement, which includes an

implementation period, and passes the legislation necessary to implement that agreement, the Government will defer the coming into force of these instruments until the end of the implementation period. If a deal on our future relationship is reached, we envisage that the instruments will be revoked in their entirety.

2.41 pm

**Yasmin Qureshi** (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Sir David. We will abstain on both statutory instruments. Colleagues will be relieved to hear that most of my comments will relate to the draft family regulations; we understand the need for the draft civil partnership and marriage regulations, and I have no observations on them.

It is important to observe that the draft family regulations will ensure that the existing reciprocity between EU member states and the United Kingdom in matters pertaining to marriage, divorce, annulment, parental responsibility and maintenance no longer applies after exit day. The draft regulations make some provision for cases that start before exit day. Disappointingly, however, an impact assessment for the instrument has not been published.

We would support the draft regulations in the event of no deal, as it would be inappropriately unilaterally to continue those mechanisms. However, the scale of the loss of international functionality in family law in the event of no deal must be stressed. The lives of UK and EU27 citizens have become intertwined over the past 40 years. 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.

Currently, families in the UK have the following benefits. The regulation on mutual recognition of protection orders helps to enforce orders made to protect victims of domestic violence or harassment across borders. The European enforcement order provides a streamlined procedure for enforcing uncontested claims, for example where there has been an out-of-court settlement, which is extremely useful. The maintenance regulation provides for a series of measures aimed at facilitating the payment of maintenance claims in cross-border situations.

The Brussels II regulation allows mutual recognition of divorce orders, decides the jurisdiction and forum of divorce cases, and promotes close collaboration of courts and national welfare authorities in matters of children and jurisdiction, recognition and enforcement of children orders, child protection and child abduction. Brussels II also provides an automatic system of recognition of contact orders; ensures easier enforcement of child arrangement orders, which decide where a child lives and how much time they spend with each parent; and allows cases to be transferred to the court that is best for the child and the case.

If we were to leave without a deal, we would have to fall back on the international arrangements, which are not as comprehensive. 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

[Yasmin Qureshi]

the Minister said about signing up to various international 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.

**Anna McMorris** (Cardiff North) (Lab): Does my hon. Friend agree that it is very worrying that no impact assessment has been published before the regulations have come before us today? Would she like to know when those impact assessments will be published?

**Yasmin Qureshi**: I totally agree with my hon. Friend, which is why I alluded to that issue earlier. Without a formal assessment by the Ministry of Justice, which I hope it will carry out, we can say that under the current arrangements seamless laws are applied and we do not have to worry about getting judgments or orders. Of course, most people are able to take advantage of those arrangements, especially—to reiterate what I said earlier—people who do not have much money or assets and vulnerable adults. Those people are able to access their rights, which they will not be able to do in the same way once we exit the European Union.

Leaving the European Union without a deal will cause a tremendous amount of problems for many families and people across the United Kingdom, especially people who are not financially well off, those who are on benefits and those who cannot access legal aid. They are going to have a horrific and horrendous time.

2.47 pm

**Mhairi Black**: I want to start by saying that I appreciate that the instruments are very dense and technical. Will the Minister write to me to clarify a couple of things? The part that particularly concerns me is child maintenance. I would like clarification that child maintenance comes under the Hague convention and that there will be no EU member states where we do not have a framework in respect of child maintenance in particular. I appreciate that that is something that the Minister can go away and find out.

I am keen to find out exactly when it is intended that the full impact assessment will be published, as was said by the hon. Member for Cardiff North. If we do not have a date for the full impact assessment, I would appreciate the reasoning behind why we are ploughing on ahead when we have not had the chance to review things properly.

At the moment, I am still going to vote against the motions, for the simple reason that I find it incredible that neither of the instruments has been subject to formal consultation, when we have such an unprecedented event about to happen. That is the first thing that is a real red flag for me.

I also find it incredible that there are no plans to issue any guidance. The explanatory memorandum to the draft family regulations says that the Government have spoken to

“law stakeholders and leading family law practitioners”,

but at the bottom of the same page it says,

“rules on divorce etc...and parental responsibility legal aid will require relevant businesses, charities and voluntary bodies to familiarise themselves and adjust their administrative arrangements to deal with the new rules.”

The Government themselves recognise that the regulations will have a huge impact on many bodies that people are incredibly reliant upon.

**Mr Goodwill**: I understand the hon. Lady’s point on consultation. However, the Government are surely trying to maintain the current situation. Governments consult when changing things, but the Government are currently endeavouring to ensure that, following Brexit—whether with a deal or without a deal—people can maintain their rights and maintain the same opportunities to bring cases, whether on child maintenance or divorce.

**Mhairi Black**: I fully appreciate the right hon. Gentleman’s point, and I have to say that, in essence, I agree. It is the job of Government to try to think of things that will actually work. However, with the greatest of respect, the Government have had the last two years to organise all this. To be doing it at the last minute, without providing enough information, is not good enough. The attitude is almost, “This will have to do,” because we are near the deadline. I find it hard to see how the Government can assure us that the statutory instruments will have a positive impact, when their one reason is that there will be workable rules. That is like saying, “Och, at least we have something.” I am really unimpressed with what has been provided. It is certainly not enough to change my mind at this moment in time.

With the greatest of respect, the Government are not exactly renowned for their transparency or for keeping their opinion the same on everything. With that in mind, the draft instruments do nothing to inspire me with confidence. They are not good enough and they are not adequate to fill the gap, so I will have to vote against them.

2.51 pm

**Lucy Frazer**: Thank you for the opportunity to reply, Sir David.

The hon. Member for Bolton South East was absolutely right to identify the importance of this area. Three million EU nationals live in this country, and the EU has recognised that if we move forward with a deal, it would be interested in co-operating in this area, such is the importance of family law.

I will touch on a couple of important points that were made by Members from across the Committee. On guidance, the Government released a technical notice last September dedicated to civil judicial co-operation that set out what will be our approach in the event that we are unable to reach a deal, so people have had some time to analyse our approach and to think about it carefully.

There has been the suggestion that we have not done a formal consultation. I assure Members and the public that my Department has engaged fully with legal practitioners and the judiciary to understand these complex areas. We have a Brexit Law Committee that advises us, comprised of professional lawyers—both barristers and solicitors—and representatives from the City and the judiciary. It has sub-committees, including a family sub-committee, which regularly meets my officials. I have also done a roundtable on family law matters, to ensure that the difficult issues we face are dealt with.

**Mhairi Black:** I appreciate the Minister's giving way; she has been very kind to me throughout our proceedings. However, we can only go by what is in front of us. I have no doubt that the Minister has a jam-packed diary, but the explanatory notes to the draft family regulations clearly say:

"There has been no formal consultation on this instrument."

Given the importance of the kind of stuff we are talking about, we need more than that to be able to support the draft instruments.

**Lucy Frazer:** I understand what the hon. Lady says. While there might not have been a formal consultation, in the governmental sense, I assure her that we look at these issues with professionals, internally and externally, to ensure that we take the right course.

There are impact assessments. They are published online with the draft instruments themselves. I am happy to share those with any Member. My officials have undertaken a full impact assessment for these draft instruments, which found that we should expect a cost increase for Her Majesty's Courts and Tribunals Service, because we expect case volumes to increase and there might be the risk of parallel proceedings in other EU countries. However, we are taking steps in relation to those matters.

On the point the hon. Member for Paisley and Renfrewshire South made about the 1970 Hague convention on divorce and legal separation, it is true that only 12 EU member states are party to it. The convention was implemented in the UK by the Family Law Act 1986. Its rules allow generous recognition provisions for overseas divorces to be recognised in the UK, whether or not the country in which the divorce was granted is a party to the 1970 convention, providing minimum criteria are met. We have been clear that, regardless of the outcome of Brexit, we will support developing the scope and coverage of international family law conventions, including the 1970 divorce recognition convention.

To assuage the concerns of the hon. Member for Paisley and Renfrewshire South about Scotland specifically, Scotland is not necessarily taking the same approach as

England, Wales and Northern Ireland to all such matters. The draft family regulations revoke Brussels IIa for England and Wales and Northern Ireland; it does not revoke it for Scotland, except for the provisions of Brussels IIa relating to the child abduction override—otherwise, Scotland is making its own provisions. The instrument revokes the maintenance regulation for all parts of the UK, except in relation to ongoing proceedings. Obviously, the Hague convention issue will apply across the UK.

I hope that I have dealt with the points that have been made. If any remain, or if there are others, I am happy to write to Members. I therefore recommend that the provisions of the draft statutory instruments become law.

*Question put.*

*The Committee divided: Ayes 9, Noes 2.*

#### **Division No. 1]**

#### **AYES**

Frazer, Lucy	Menzies, Mark
Goodwill, rh Mr Robert	Milling, Amanda
Hair, Kirstene	Percy, Andrew
Herbert, rh Nick	Wragg, Mr William
Maclean, Rachel	

#### **NOES**

Black, Mhairi	McMorrin, Anna
---------------	----------------

*Question accordingly agreed to.*

#### **DRAFT CIVIL PARTNERSHIP AND MARRIAGE (SAME SEX COUPLES) (JURISDICTION AND JUDGMENTS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019**

*Motion made, and Question put,*

That the Committee has considered the draft Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) (Amendment etc.) (EU Exit) Regulations 2019.—(*Lucy Frazer.*)

*The Committee divided: Ayes 9, Noes 2.*

#### **Division No. 2]**

#### **AYES**

Frazer, Lucy	Menzies, Mark
Goodwill, rh Mr Robert	Milling, Amanda
Hair, Kirstene	Percy, Andrew
Herbert, rh Nick	Wragg, Mr William
Maclean, Rachel	

#### **NOES**

Black, Mhairi	McMorrin, Anna
---------------	----------------

*Question accordingly agreed to.*

2.59 pm

*Committee rose.*

