

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

CIVIL JURISDICTION AND JUDGMENTS (CIVIL  
AND FAMILY) (AMENDMENT) (EU EXIT)  
REGULATIONS 2019

*Monday 28 October 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**

**Friday 1 November 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:* IAN PAISLEY

- |  |  |
|--|--|
| † Aldous, Peter ( <i>Waveney</i> ) (Con)   | † Philp, Chris ( <i>Parliamentary Under-Secretary of State for Justice</i> ) |
| † Cartlidge, James ( <i>South Suffolk</i> ) (Con)                                  | † Qureshi, Yasmin ( <i>Bolton South East</i> ) (Lab)                         |
| † Glindon, Mary ( <i>North Tyneside</i> ) (Lab)                                    | † Robinson, Mary ( <i>Cheadle</i> ) (Con)                                    |
| † Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> )           | † Russell-Moyle, Lloyd ( <i>Brighton, Kemptown</i> ) (Lab/Co-op)             |
| Hoey, Kate ( <i>Vauxhall</i> ) (Lab)   | † Swayne, Sir Desmond ( <i>New Forest West</i> ) (Con)                       |
| Little Pengelly, Emma ( <i>Belfast South</i> ) (DUP)                               | † Vickers, Martin ( <i>Cleethorpes</i> ) (Con)                               |
| † McDonald, Stuart C. ( <i>Cumbernauld, Kilsyth and Kirkintilloch East</i> ) (SNP) | † Western, Matt ( <i>Warwick and Leamington</i> ) (Lab)                      |
| Mahmood, Shabana ( <i>Birmingham, Ladywood</i> ) (Lab)                             | Yohanna Sallberg, <i>Committee Clerk</i>                                     |
| † Murray, Mrs Sheryll ( <i>South East Cornwall</i> ) (Con)                         |  |
| † O'Brien, Neil ( <i>Harborough</i> ) (Con)  | † <b>attended the Committee</b>  |

# First Delegated Legislation Committee

Monday 28 October 2019

[IAN PAISLEY *in the Chair*]

## Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019

4.30 pm

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

That the Committee has considered the Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019 (S.I., 2019, No. 1338).

It is a great pleasure to serve under your chairmanship, Mr Paisley. The statutory instrument forms part of the Government's ongoing work to ensure that there are functioning domestic laws in the event that the UK leaves the European Union without a deal on cross-border co-operation on civil and commercial and family law. The instrument makes amendments to the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019, which for brevity I will refer to as the civil regulations, and to the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019, which I will refer to as the family regulations.

Those two instruments are part of the Government's main no-deal Brexit statutory instruments, dealing with the EU's judicial co-operation framework in civil and family matters. Today's instrument corrects two minor technical defects in those instruments and clarifies the interaction of international conventions and domestic law post Brexit. We are therefore debating some extremely technical regulations, which correct minor technical points in the SIs that were passed earlier this year.

The civil regulations revoke Brussels Ia, which is the main EU regulation dealing with jurisdiction and the recognition and enforcement of judgments in cross-border civil and commercial matters. In its place, domestic private international laws will apply to cross-border cases involving parties from EU member states. However, to ensure that certain employees are not disadvantaged by that change, the civil regulations transpose special protective jurisdiction rules for employment cases from Brussels Ia into UK domestic law, delivering on the Government's pledge that no rights will be diminished as we leave the European Union. We will transpose the existing body of EU law directly into UK law, so that people's rights remain exactly the same the day after exit as the day before.

An error has been identified in the way that the civil regulations transpose that rule. The Government's no-deal exit policy intention is, as I explained, to replicate as closely as possible the Brussels Ia employment jurisdiction rules, modified only as is necessary to make them work in the UK. However, in relation to one of the grounds of the special jurisdiction rules, the rule has been inadvertently altered to cover employees without a habitual place of work in any one part of the UK, rather than employees without a habitual place of work in any one country, as was the case in Brussels Ia.

I do not know whether Members have a marked-up copy of the SI, but they will see that we add extra words to the original SI to make the provision precisely the same as in the current regulations under Brussels Ia. Today's instrument addresses the issue by amending the civil regulations in the way that I just described to ensure that the rules are correctly transposed into domestic law, modified only as necessary to make them work in the UK context. It does not represent any reduction in the protection available to employees; it simply properly replicates the existing EU rules to ensure that there is no change as we move from Brussels Ia to UK law in the event of a no-deal exit. If there is a deal, the regulations will not take effect.

The family regulations, passed earlier this year, revoke Brussels IIa, which is the main EU regulation dealing with jurisdiction and recognition and enforcement of judgments in parental responsibility cases, and in maintenance cases. In their place, the UK will move principally to the 1996 Hague convention on cross-border parental responsibility matters involving parties from the EU members states, and the 2007 Hague convention on the cross-border recognition and enforcement of maintenance involving parties from the EU members states as well. In the event of a no-deal Brexit—again, this applies only in a no-deal eventuality—it is our intention to rejoin Hague 2007 and Hague 2005 in our own right, and indeed, we have already made provision for that. If there are no applicable Hague convention rules, the family regulations make provision for the rules that will apply. In the case of maintenance jurisdiction, they are largely the rules as they existed prior to the relevant EU rules taking effect.

Two minor errors have been identified in the way that the family regulations amended domestic legislation to reinstate pre-EU jurisdiction rules. The first is the reference to the carrying through of actions “for adherence and aliment”. That is a Scottish provision that was abolished in Scottish law in 1984, so clearly, we cannot refer back to that. We are essentially deleting the reference. Again, I have a mark-up that illustrates where the deletion occurs.

Hon. Members might ask why we in Westminster are discussing family laws, which are ordinarily devolved. The Ministry of Justice has corresponded with its counterparts in Scotland and Northern Ireland to get their permission to deal with this matter here. I have a letter from Ash Denham of the Scottish Government, dated 18 October—just a few days ago—and one from Peter May, the lead civil servant in Northern Ireland, dated 12 August, signalling that they are content for us to deal with the matter via a statutory instrument in Westminster, even though it would ordinarily be devolved. We have checked to make sure that everybody in the devolved Administrations is happy.

The instrument addresses the problem that I referred to by deleting the reference to actions for adherence and aliment. The second error has the unintended effect that, following Brexit, if there were no deal, certain applicants seeking maintenance, which is referred to as aliment in Scotland, would be disadvantaged, in the sense that if they were bringing an action for aliment only and the party was in a different country, they would not be able to bring the action in Scotland but would have to bring it in another country. That would clearly inconvenience and disadvantage the applicant, so the correction enables those proceedings to be brought in Scotland, as was previously the case.

The Government recognise that the precise effect of some provisions in the family regulations is potentially open to argument. Some family law practitioners have expressed concerns about a lack of clarity and certainty as to the application of the saving and transitional provisions in the family regulations to ensure that cases that started under Brussels IIa, or the maintenance regulations before exit, continue under those same regulations after exit. The concern is about whether it is clear enough that those provisions apply to intra-UK maintenance jurisdictions, as was the Government's intention.

Stakeholders have also highlighted a potential lack of clarity as to the post-exit relationship between domestic jurisdiction rules in parental responsibility and maintenance matters and the relevant Hague convention rules. The final part of the statutory instrument addresses those areas of uncertainty through amendments to the family regulations. Again, I have a marked-up here that I am happy to share with hon. Members afterwards. Those amendments put it beyond doubt that the saving and transitional provisions apply to intra-UK maintenance matters and that the relevant Hague convention rules take precedence over domestic jurisdiction in cases that properly fall under the relevant Hague conventions.

I hope that is a relatively clear and concise description of the technical changes, but I am happy to answer any queries that hon. Members may have. I commend the instrument to the Committee.

4.39 pm

**Yasmin Qureshi** (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Mr Paisley. I thank the Minister for outlining the proposed changes. The fact is that we would not be in this mess if the Government had anticipated and made allowances for those rules.

As a current European Union member state, the United Kingdom applies the Brussels I regulation to legal disputes of a civil or commercial nature. That set of rules has made proceedings much easier, be they domestic or disputes in other European Union countries. The current system creates an affordable and effective process for the recognition and enforcement of intra-European Union judgments. Small traders or consumers can easily take their cases to their domestic courts using local lawyers, and the domestic judgment is then recognised across the whole of the European Union. That is a considerable and useful advantage to many people of limited means.

Big companies can fight litigations, but small businesses, employers and those fighting family dispute matters will have to go to different courts to exercise their rights, which will make things much more complicated for them. We believe that the Government should have anticipated those matters and put in place a mechanism to deal with them. The Opposition will abstain in a vote on the provisions because we believe that the Government have not done enough to protect people's rights—the provisions have been introduced at the last minute, but they are not good enough.

The Government should have worked much harder to anticipate and deal with this matter to ensure that people's civil rights are protected, be they for employees against employers, in family disputes or in small-business and commercial disputes. The Government are introducing legislation at the last minute to avoid the inevitable chaos of exiting the EU without a deal. Essentially, the Government should have anticipated this and done more to protect workers' rights and the rights of the individual, to make life easier for everyone. On that basis, we will abstain.

4.42 pm

**Stuart C. McDonald** (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I have very little to say. For any legal purists watching from Scotland, I think the action referred to is actually aliment, not ailment. Other than that, what the Minister said made sense; the provisions correct two particular problems with the earlier regulations and on that basis, I do not object. I share the shadow Minister's concerns about the fact that these changes need to be made—we should try to get the regulations right the first time around—but it is better that we do it now than not at all.

**The Chair:** Minister, do you wish to make any further comments or are you happy for me to put the Question?

**Sir Desmond Swayne** (New Forest West) (Con): Put it!

**Chris Philp:** I think I detect enthusiasm for the Question to be put.

**The Chair:** Thank you, Minister.

*Question put and agreed to.*

4.43 pm

*Committee rose.*





