



Baroness Kennedy of the Shaws  
Chair  
EU Justice sub-Committee  
House of Lords  
London  
SW1A 0PW

13 September 2018

Dear Helena

## EU EXIT – CIVIL JUDICIAL CO-OPERATION AND NO DEAL SCENARIO PLANNING

Today the Government has published a technical note setting out our approach for continuing civil judicial cooperation between the UK and EU Member States in the unlikely event we are unable to reach a deal in negotiations with the European Union. As with all the Government's technical notices, this will set out information for 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 does not reflect an increased likelihood of 'no deal,' an acceleration at this point was long-planned to ensure plans are in place by March 2019 in the unlikely scenario they are needed. Negotiations are progressing well and both the UK and the EU continue to work hard to seek a positive deal. However, it is the job of a responsible Government to prepare for all scenarios, including the unlikely event that we reach March 2019 without agreeing a deal.

The UK currently applies EU rules to determine which country's courts hear a civil, commercial or family law case raising cross-border issues (jurisdiction); which country's laws apply (applicable law); and which enable a judgment obtained in one country to be recognised and enforced in another (recognition and enforcement).

As you are aware from our response to your report from the last Session and from the evidence Lucy Frazer gave you in July, we are seeking a comprehensive relationship with the EU in this area. However, in the event that we leave the EU on 29 March 2019 with no future agreement in place on civil judicial cooperation, there would be no overarching framework for ongoing cooperation between the UK and EU Member States. Without agreement on a comprehensive relationship, there would be no guarantee that any unilateral application of current rules would be reciprocated by EU Member States and we would be unable to prevent the risk to both UK and EU litigants of parallel proceedings, cases taking longer and the risk that judgments are not enforced.

Due to this loss of reciprocity, our broad approach would be to repeal most of the existing civil judicial cooperation rules and instead use the domestic rules which each UK legal jurisdiction applies in relation to non-EU countries.

The UK would also apply existing international agreements. Where the UK currently participates in such agreements by virtue of our EU membership (namely, the 2005 Hague Convention on Choice of Court Agreements and the 2007 Hague Convention on Maintenance), the UK would make the necessary arrangements to continue to participate in these international agreements in its own right.

That is why the Government is also publishing draft secondary legislation under the European Union (Withdrawal) Act 2018 that would, in the event of no deal, ensure that the UK statute book is ready, on Exit, to comply with those Hague Conventions.

The *Choice of Court Agreements (Hague Convention 2005 Etc) (EU Exit) Regulations 2018* will ensure that the rules of the 2005 Hague Convention can work effectively between the UK and all the existing contracting parties to this Convention including the EU, Denmark, Montenegro, Mexico and Singapore. It will also ensure that the UK can operate the 2005 Hague Convention with any future contracting parties to this Convention. The instrument will provide legal certainty regarding how 'transitional' cases to which the 2005 Hague Convention currently applies, and agreements entered into during any period between disapplication of the 2005 Hague Convention to the UK upon EU Exit, and the Convention coming into force for the UK following accession will be dealt with immediately on Exit.

Similarly, the *International Recovery of Maintenance (Hague Convention on The International Recovery of Child Support and Other Forms of Family Maintenance 2007 (EU Exit) Regulations 2018* will ensure that the rules of the 2007 Hague Convention can work effectively between the UK and all the existing contracting parties to this Convention including the EU, USA, Brazil, Turkey and Ukraine amongst others. Again, it will also ensure that the UK can operate the 2007 Hague Convention with any future contracting parties to this Convention, and provide legal certainty on 'transitional' cases at the point of exit.

The Government remains committed to securing an agreement with the EU on a future relationship which covers civil judicial co-operation. However, in the unlikely event of a no-deal scenario, continued participation in both the 2005 and 2007 Hague Conventions will provide greater legal certainty to the individuals and businesses who engage in cross-border commercial activities, and enable individuals and families, who rely on the rules in the 2007 Convention to recognise and enforce family maintenance decisions, to continue to do so after we leave the EU. The draft secondary legislation we have just published seeks to provide that certainty. I will be writing in due course with details of other justice-related statutory instruments that I intend to make in the event of no deal being reached with the EU.

I hope this information is helpful. I attach a copy of the technical notice we are publishing today. I will also place a copy of the technical notice in the House Libraries alongside a copy of this letter. The documents will also be available on gov.uk. If you would like to discuss Government's no deal plans in civil judicial co-operation in further detail, or would like a private briefing to discuss the Ministry of Justice's no-deal plans, Lucy Frazer who leads on EU Exit for the Ministry of Justice would be very happy to meet. Please contact Lissy Verrall in her office at [lissy.verrall@justice.gov.uk](mailto:lissy.verrall@justice.gov.uk). to arrange a meeting.

Yours ever  


**RT HON DAVID GAUKE MP**