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Brexit: justice for families, individuals and businesses?

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The European Union Committee

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Evidence is published online at http://www.parliament.uk/brexit-civil-justice-cooperation/ and available for inspection at the Parliamentary Archives (020 7129 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

This report considers the ramifications of Brexit for the EU's programme of civil justice cooperation introduced by the three Regulations—the Brussels I (recast), the Brussels IIa and the Maintenance Regulations—which collectively form the so-called Brussels regime. Our inquiry was also shaped by the Government's view that once we leave the EU there can be no jurisdiction for the Court of Justice of the EU.

The evidence clearly illustrates that these three Regulations and the system they engender play a significant role in the daily lives of UK and EU citizens, families and businesses, who work, live, travel and do business within the EU.

Human relations can go wrong in many ways, including:

- Divorce;
- Disputed custody of children;
- A medical negligence claim;
- Litigation arising out of a car accident abroad;
- Failure to perform a contract; or
- An employment dispute.

All three Regulations provide certainty, predictability and clarity about where the resulting legal dispute should be pursued.

They also provide for the automatic recognition and enforcement of judicial decisions and judgments throughout the EU. They regulate a pan-European system of civil justice cooperation, which has been proved to work and reflects the UK's legal culture. The myriad problems that they seek to address will not cease when we leave the EU.

Our inquiry coincided with the publication of the Government's White Paper on its exit from and future relationship with the EU. The Minister gave evidence and told us that the Government had consulted on these matters, although there is only a short reference to these Regulations in the White Paper. The Minister also confirmed that their contents would feature in the Brexit negotiations. However, beyond vague references to "other arrangements" the Committee was unable to discern a clear Government plan as to how the continued post-Brexit operation of these important Regulations will be secured. The Minister also referred to the utility of the Great Repeal Bill, but it is not clear how this could possibly deliver the reciprocity that is necessary for the functioning of these Regulations.

We conclude that either the Government has decided not to make its position public or, as yet, has not taken full account of the impact of Brexit on the areas of EU law that these Regulations cover.

In our view, the loss post-Brexit of the Brussels IIa Regulation and the Maintenance Regulation would be felt most profoundly both by those families that rely on their provisions, for example for the enforcement of judicial decisions, and by our family court system, which witnesses warned would struggle to cope

with such radical change. Our evidence suggests that in the area of family law, adequate alternative arrangements are not immediately apparent.

As for the areas of civil law covered by the Brussels I Regulation (recast), membership of the so-called Lugano Convention does appear to offer a workable but inferior solution; but we warn that Lugano operates under an earlier and less effective iteration of the Brussels Regulation, and it is not clear if membership of the Convention will be sought, offered or acceptable to those negotiating our exit.

If the Government continues to apply its anti-CJEU stance too rigidly it will severely limit its post-Brexit options for adequate alternative arrangements. It is clear that regardless of the outcome of the Brexit negotiations, civil justice cooperation of the type dealt with by these Regulations will remain a necessity. We are in no doubt that without adequate alternative arrangements post-Brexit there will be great uncertainty for UK businesses and citizens. Given the importance of these Regulations, we call on the Government to publish a coherent plan for addressing their post-Brexit application.

Brexit: justice for families, individuals and businesses?

CHAPTER 1: INTRODUCTION

Background

1. In February 2017, the Government published its White Paper on Brexit, which stated its intention to bring an end to the Court of Justice of the European Union's (CJEU) jurisdiction in the UK.[1] In so doing, it confirmed the remarks of the Prime Minister in her speech on 17 January 2017:

> "We will take back control of our laws and bring an end to the jurisdiction of the European Court of Justice in Britain. Leaving the European Union will mean that our laws will be made in Westminster, Edinburgh, Cardiff and Belfast. And those laws will be interpreted by judges not in Luxembourg but in courts across the country. Because we will not have truly left the European Union if we are not in control of our own laws."[2]

2. The Government's chosen means for severing the UK's (legal) ties with the EU is to introduce the Great Repeal Bill (GRB), which "will provide legal certainty over our exit from the EU".[3] The White Paper seeks to reassure businesses and individuals that "the rules will not change significantly overnight [and any] rights and obligations will not be subject to sudden change". The Government promises that the GRB will "ensure that all EU laws which are directly applicable in the UK (*such as Regulations*) … remain part of domestic law on the day we leave the EU" (emphasis added).[4]

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1 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, February 2017, pp 13–15: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 27 January 2017]. The Government promised to (i) "bring an end to the jurisdiction of the CJEU in the UK", and (ii) that the "UK will seek to agree a new approach to interpretation and dispute resolution with the EU" which will "respect UK sovereignty, protect the role of our courts and maximise legal certainty".

2 Theresa May MP, Speech on The Government's negotiation objectives for exiting the EU, 17 January 2017: https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech [accessed 9 February 2017]

3 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, Cm 9417, February 2017, p 9, para 1.1: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 27 January 2017]

4 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, Cm 9417, February 2017 p 10: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 27 January 2017]

Three Regulations and the CJEU

3. At the time of the referendum on the UK's Membership of the EU in June 2016, the EU's institutions had agreed, within the Area of Freedom, Security and Justice (AFSJ) (see Box 1), three Regulations designed to facilitate judicial cooperation in civil matters:

   (1) Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).[5] The so-called Brussels I Regulation recast (BIR) (see Boxes 2 and 3).

   (2) Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.[6] The so-called Brussels IIa Regulation (BIIa) (see Box 8).

   (3) Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance.[7] The so-called Maintenance Regulation (MR) (see Box 9).

4. All three Regulations were subject to the UK's opt-in arrangements,[8] under which the Government decides, on a case-by-case basis, whether it is in the national interest to participate. Significantly, on all three occasions the Government decided to participate because, as Professor Steve Peers of Essex University told us, the Government "felt there was a problem that needed addressing".[9] Indeed, since the referendum result, the Government has decided to opt into the current renegotiation of the BIIa.

5 Regulation 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20 December 2012, pp 1–32

6 Regulation 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000, OJ L 338, 23 December 2003, pp 1–29

7 Regulation 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10 January 2009, pp 1-79

8 Set out in Protocol 21 to the Treaty on European Union and the Treaty on the Functioning of the European Union ,'On the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice' OJ C 326, consolidated version of 26 October 2012, pp 0001–0390

9 Q 6

Box 1: The EU's Area of Freedom, Security and Justice: civil justice cooperation

In Tampere in October 1999, the EU Member States pledged to develop an Area of Freedom, Security and Justice (AFSJ), within which the economic freedoms enjoyed by EU citizens, including the right to move freely within the Union, could be exercised "in conditions of security and justice accessible to all".[10]

The European Council[11] also undertook to create a "Genuine European Area of Justice", within which "individuals and businesses should not be discouraged from exercising their rights by the incompatibility or complexity of legal … systems in the Member States".[12] In the area of civil law, the leaders of the national Governments called on the Commission to bring forward legislation designed to remove the "measures which are still required to enable the recognition and enforcement of a decision or judgment" in another Member State.[13]

Subsequent European Councils renewed the Member States' commitment to the Genuine Area of Justice and sought to widen and build upon these aims.[14] For example in 2005 in The Hague, the European Council promised to "eliminate legal and judicial obstacles in litigation in civil and family matters with cross-border implications".[15] The Member States attached "great importance to the continued development of judicial cooperation in civil matters"[16] and invited the Commission to propose legislation in the field of family law addressing the "recognition and enforcement of decisions on maintenance".[17]

Further, in Stockholm in 2010, the European Council noted "with satisfaction"[18] the work already undertaken to create the AFSJ, but suggested extending the AFSJ legislative programme "to fields that are not yet covered but are essential to everyday life, for example … matrimonial property rights and the property consequences of the separation of couples".[19]

5. Until such time as the UK withdraws from the EU, the interpretation and application of the three Regulations falls to the CJEU. During this inquiry, David Williams QC of 4 Pump Court described the role of the CJEU as "one of the big advantages" of this EU legislation, because the Court "brought uniformity of interpretation" to its application, without which "different concepts are applied differently in different countries".[20]

6. For the UK, after Brexit, the certainty of civil justice cooperation directly overseen by the CJEU will cease.

10 Tampere European Council 15 and 16 October 1999, 'Presidency Conclusions', para 2: http://www.europarl.europa.eu/summits/tam_en.htm [accessed 27 January 2017]
11 The EU Institution made up of the Heads of State and/or Government of the Member States
12 Tampere European Council 15 and 16 October 1999, 'Presidency Conclusions', para 28: http://www.europarl.europa.eu/summits/tam_en.htm [accessed 27 January 2017]
13 Tampere European Council 15 and 16 October 1999, 'Presidency Conclusions', para 34: http://www.europarl.europa.eu/summits/tam_en.htm [accessed 27 January 2017]
14 See The Hague Council Conclusions: The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, OJ C 53/1, 3 March 2005, and the Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens, OJ C 115/1, 4 May 2010.
15 Introduction to The Hague Council Conclusions, OJ C 53/1, 3 March 2005
16 The Hague Council Conclusions, OJ C 53/1, 3 March 2005, para 3.4.1
17 The Hague Council Conclusions, OJ C 53/1, 3 March 2005, para 3.4.2
18 The Stockholm Programme, OJ C 115/1, 4 May 2010, para 3.1.
19 The Stockholm Programme, OJ C 115/1, 4 May 2010, para 3.1.2
20 Q 9

The purpose of this report

7. Given their highly specialist and technical nature, it is not surprising that these three Regulations, and the system of civil justice cooperation that they maintain, received little public attention during the referendum campaign or subsequently. However, they each play an important role in facilitating the daily operation of the European legal system, while also protecting the rights of EU citizens and the ability of businesses to engage with the Single Market.

8. In the area of family law, the BIIa and the MR provide certainty and protection to children and families in the often fractious and difficult environment of family disputes. Given that many people have taken advantage of the EU's rules facilitating the free movement of people, such disputes can be made additionally complicated by a cross-border element (see the case studies in Boxes 10 and 12). These two Regulations seek to lessen the impact of this aggravating factor.

9. In the civil field, the BIR facilitates the affairs of all those engaged in the myriad cross-border links enabled by the EU's rules, from the tourist hit by a car in Warsaw, the consumer seeking redress for a defective product in Lisbon, to the employee seeking equal pay in London, and the tenant enforcing their rights in Nicosia. For businesses operating within the Single Market, from large multinational corporations to Small and Medium Enterprises, the BIR offers all these people the reassurance that when problems arise legal remedies are readily available and easily enforceable across borders (see the case study in Box 4).

10. Beyond their everyday human impact, these Regulations also play an important role in the UK's market for legal services; legal advice; and, commercial litigation. According to the Government[21] and the Law Society of England and Wales, legal services in the UK employ around 370,000 people and, in 2015, contributed £25.7 billion to the UK's economy.[22] A recent study by the University of Luxembourg found that between 2007 and 2012, 11% of all international commercial contracts chose English contract law as the applicable law for the settlement of disputes.

11. Further, all three EU Regulations have, in part through the introduction of predictable rules on jurisdiction and the enforcement of judgments, enabled UK law firms to establish themselves as the second largest market for legal services globally. This is particularly so with regard to the BIR, which specifically protects the validity of choice-of-court agreements (see Box 5).[23]

12. Inevitably Brexit, and the Government's stance on the jurisdiction of the CJEU, cast serious doubt on the future application of these three Regulations to the UK, and on the reciprocal rules they preserve between Member States. The Minister, the Rt Hon Sir Oliver Heald QC, stated that these "important issues" were "very high in the minds of Government".[24] But,

21 Q 42

22 The Law Society, *The Economic Value of the Legal Services Sector report*, March 2016: http://www.lawsociety.org.uk/support-services/research-trends/a-25-billion-legal-sector-supports-a-healthy-economy/ [accessed 27 January 2017]

23 Professor Gilles Cuniberti of the University of Luxembourg, 'The International Market for Contracts: The Most Attractive Contract Laws', *Northwest Journal of International Law and Business* , vol 34, issue 3 (2014): http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1767&context=njilb [accessed 27 January 2017]

24 Q 38

aside from a brief reference to potential cooperation on civil justice, these three Regulations and the problems they seek to resolve did not feature in the Government's White Paper.

13. The purpose of this report is therefore to illustrate the central importance of these Regulations to the UK's legal system and to the citizens and businesses relying on it. We look at the problems that would arise if the UK left the EU without securing agreement on their application to the UK post-Brexit. We also address the likely impact of the Government's promised Great Repeal Bill, and consider the potential alternatives for this area of civil justice cooperation once the UK leaves the EU. In undertaking this inquiry we have kept in mind the Prime Minister's statement to the Conservative party conference in September: "Let's state one thing loud and clear … we are not leaving [the EU] only to return to the jurisdiction of the European Court of Justice. That's not going to happen."[25] The implications of this position for civil justice are the subject of this report.

The EU Committee's work

14. Following the referendum on 23 June 2016, the European Union Committee and its six sub-committees launched a coordinated series of inquiries, addressing the most important cross-cutting issues that will arise in the course of negotiations on Brexit. These inquiries, though short, are an opportunity to explore and inform wider debate on the major opportunities and risks that Brexit presents to the United Kingdom.

15. To that end, between December 2016 and January 2017 we took oral evidence from the witnesses listed in Appendix 2. Professor Adrian Briggs of Oxford University and the Law Society of England and Wales submitted written evidence. We are very grateful to all of them for their participation in this inquiry.

16. **We make this report to the House for debate.**

25 Theresa May MP, Speech to the Conservative Party Conference on Brexit, 2 October 2016: https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-mays-conservative [accessed 27 January 2017]

CHAPTER 2: THE BRUSSELS I REGULATION (RECAST)

Background

The development of the Brussels Regime

17. The Brussels I Regulation (recast) (and the two other Regulations that form the focus of this report) can be traced back to the original 1957 Treaty of Rome.[26] In the Treaty, the founding six Member States of the European Economic Community (EEC) promised to "enter into negotiations with each other with a view to securing for the benefit of their nationals … the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards"

18. To that end, in September 1968 the (still) six EEC Member States agreed the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters (the Brussels Convention).[27] It laid down detailed rules dealing with the circumstances under which the courts in the Member States might exercise jurisdiction and rules addressing specific civil and commercial legal areas including contract, tort and maintenance.[28] Following the UK's accession to the EEC and the adoption of the *acquis*, the Brussels Convention was given domestic effect in the UK by the Civil Jurisdiction and Judgments Act 1982, which came into force in January 1987.[29]

19. Some years later, in March 2002, as part of the EU's efforts to create the AFSJ, the (then) 15 EU Member States, with the exception of Denmark (which subsequently negotiated separate arrangements[30]), agreed the Brussels I Regulation, which replaced the Brussels Convention. Some of the Brussels I's shortcomings are discussed in Box 6; Denmark's bespoke arrangements are discussed in Box 13. Then, in 2012, following a long period of consultation, further amendments were agreed as part of the negotiation of the current version of the Regulation: the Brussels I Regulation (recast) (see Boxes 2 and 3).[31]

British influence

20. We asked our witnesses what influence the United Kingdom had had on the development of these Regulations. Former Court of Appeal Judge, the Rt Hon Sir Richard Aikens, emphasised the British influence in shaping the content and evolution of this area of EU legislation. He said "there was a great deal of input [from British lawyers and judges] into the moulding of the BIR in particular, and the changes that were made" in 2012. While

26 The Treaty of Rome (1957), Article 220
27 The 1968 Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters, OJ L 299, 31 December 1972
28 The Convention's stated aims were: (i) to avoid parallel legal proceedings within the six Member States; (ii) to simplify the recognition and enforcement of judgments; and, (iii) to strengthen the legal protection afforded to the citizens of the Member States. The Brussels Convention was amended and extended on subsequent occasions following the accession of the United Kingdom and other states to the European Community.
29 The Civil Jurisdiction and Judgments Act 1982
30 Council Decision 2005/790/EC of 20 September 2005, on the signing, on behalf of the Community, of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 299, 16 November 2005, pp 61–70
31 This Committee submitted its own report to the Commission's consultation: European Union Committee, *Green Paper on the Brussels I Regulation* (21st Report, Session 2008–09, HL Paper 148)

"ultimately it is a European Regulation and it emanates from Brussels … the final result owed a great deal to British input".[32]

21. The Bar Council agreed with Sir Richard. Hugh Mercer QC told us that the "UK Law Societies' joint Brussels office, the Bar Council's Brussels Office and British parliamentarians and MEPs have been tremendously influential". He added that "we have a very strong legal system, and we have been very influential in Brussels".[33] Professor Richard Fentiman, of Cambridge University, also recognised the British influence on these Regulations: "The United Kingdom has had a very considerable influence in shaping their form."[34]

22. The Minister agreed: "We are amazing in the way we affect international affairs … we have been involved in improving arrangements around the world and in the EU."[35]

23. **We acknowledge and welcome the UK's influence over the content of these three EU Regulations which are crucial to judicial cooperation in civil matters and reflect the UK's influence and British legal culture. We urge the Government to keep as close to these rules as possible when negotiating their post-Brexit application.**

What does the BIR do?

24. The BIR is built on the principle of mutual trust between Member States' legal systems.[36] It typically applies when a legal dispute has a cross-border or external element, and it sets out reciprocal rules on:

    (1) Jurisdiction, namely which court in which Member State should hear a particular civil/commercial dispute; and

    (2) Enforcement and recognition of judgments.

    As Hugh Mercer QC explained: "Wherever you get people, businesses, products or goods crossing borders … [you need] rules that sort out cross-border situations".[37]

25. Professor Jonathan Harris QC, of Serle Court, also emphasised the practical benefits of the BIR: "[The] only reason this exists is because it was considered to be complementary to free trade—you would not have a barrier to going out to provide your goods or services across Europe because you knew you would be able to recover debts".[38]

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32 Q 31
33 Q 26
34 Q 2
35 Q 42
36 Regulation 1215/2012, 12 December 2012, on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (recast), OJ L351/1, 20 December 2012, (Brussels 1 Regulation recast) Recital 26
37 Q 27
38 Q 14

Box 2: The Brussels I Regulation (recast): jurisdictional rules

In order to facilitate civil justice cooperation within the AFSJ and to avoid parallel legal proceedings (cases covering the same litigants and the same facts brought in two different Member States), the BIR sets out rules in order to determine in any civil based litigation the specific court with jurisdiction to hear the case. The primary rule is that a defendant must be sued in the courts of the State in which he or she is domiciled.[39]

Beyond the primary rule, the Regulation also contains rules of "special jurisdiction" across a broad range of civil law disputes allowing, in certain circumstances, individual defendants to be sued in certain other EU Member States, to which the dispute has a link. For example, in contractual disputes the defendant can be sued in the EU Member State in which the contract was performed;[40] if it is a consumer dispute, then the consumer can choose to bring legal proceedings in the Member State where the consumer is domiciled, or where the supplier of the product is domiciled.[41] A case study is given in Box 4

The Regulation includes similar rules across the full range of civil litigation: negligence (tort) related cases;[42] insurance disputes;[43] employment contracts;[44] trust based disputes;[45] and litigation relating to the salvage of cargo and/or freight.[46] In limited exceptions, regardless of where the parties live, the Regulation stipulates where the case must be heard (defined in the Regulation as "exclusive jurisdiction").[47] These exceptions are as follows:

(1) cases involving rights to immovable property, or the tenancy of immovable property, must be heard in the jurisdiction where that property is situated (private tenancies of under six months may be heard in the EU country where both landlord and tenant live);[48].

(2) disputes over the validity of a company's constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs must be heard in the EU country in which the company "has its seat" according to private international law;[49]

(3) proceedings dealing with the validity of entries in public registers must be heard in the courts of the Member State in which the register is kept;[50]

39 Article 4 of the Brussels 1 Regulation (recast)
40 Article 7(1) of the Brussels 1 Regulation (recast)
41 Articles 17–19 of the Brussels 1 Regulation (recast)
42 Article 7(2) of the Brussels 1 Regulation (recast); in the jurisdiction where the negligent act occurred.
43 Articles 10–16 of the Brussels 1 Regulation (recast)
44 Articles 20–23 of the Brussels 1 Regulation (recast)
45 Article 7(6) of the Brussels 1 Regulation (recast); in the Member State where the trust is domiciled.
46 Article 7(7) of the Brussels 1 Regulation (recast)
47 Article 24 of the Brussels 1 Regulation (recast)
48 Article 24(1) of the Brussels 1 Regulation (recast)
49 Article 24(2) of the Brussels 1 Regulation (recast)
50 Article 25(3) of the Brussels 1 Regulation (recast)

(4) proceedings concerning the registration or validity of patents, trademarks, designs, or other similar rights required to be deposited or registered, must be heard in the courts of the Member State in which the deposit or registration has been applied for or has taken place;[51] and,

(5) proceedings concerning the enforcement of judgments must be heard by the courts of the Member State in which the judgment has been given or is to be enforced.[52]

In order to avoid parallel legal proceedings (litigation in more than one Member State), courts not enjoying jurisdiction (as defined above) are required to stay proceedings and decline jurisdiction.[53]

The importance of the BIR

Jurisdiction

26. All our witnesses agreed that the BIR's jurisdictional rules had established legal certainty and predictability. Sir Richard Aikens said the BIR maintained "a set of rules for deciding which courts in which country of the member states of the European Union will resolve civil and commercial disputes". In his view, the Regulation "is very important [because] it is not just concerned with commercial cross-border disputes; it deals with all civil and commercial matters".[54]

27. Hugh Mercer QC said that the "uniformity and certainty given to general civil litigation" by the BIR was "very important".[55] He stated that the Regulation "gives certainty to consumers, to employees, and to victims of car accidents … if you are knocked down in the street in Nicosia, you can bring your claim against the Cypriot insurer in English courts". He concluded that the Regulation provided "certainty for the little guy".[56]

28. Oliver Jones, of Brick Court Chambers, also emphasised the protection that the Regulation conferred on individuals: "One of the fundamental rationales of the current EU system is that it is there to protect people." The BIR "protects them from parallel proceedings[57] being launched against them in different member states [and] ensures that people who are sometimes in a vulnerable position … can be sued in the courts of their home member state". The Regulation provided "a clear, codified set of rules that people can understand". In his view, it had been "proven to work".[58]

29. Oliver Jones also noted that, while "we think very much of big corporates, large commercial claims", the Regulation "applies equally to very small claims, individual claims and small company claims … which could be for a very small amount of money". He warned that anything that reduced the uniformity introduced by the Regulation would "impact on those people the most".[59]

51 Article 24(4) of the Brussels 1 Regulation (recast)
52 Article 24(5) of the Brussels 1 Regulation (recast)
53 Article 2 of the Brussels 1 Regulation (recast)
54 Q 30
55 Q 22
56 Q 22
57 For an explanation see Box 6.
58 Q 14
59 Q 14

30. Professor Adrian Briggs QC (Hon), of Oxford University, emphasised the importance of the Regulation's jurisdictional rules.[60] The BIR "regulates jurisdiction far more often and far more significantly than it does enforcement of judgments". In his view, the BIR's importance lay in the protection it conferred on defendants in the other 27 EU Member States: it "protects them from the normal jurisdictional rule of the common law: that any person who is present within the territorial jurisdiction of the English court, or any company which carries on business at a place within the jurisdiction of the court, will be liable to be sued in England".[60]

60 Written evidence from Prof Briggs QC (Hon) of Oxford University (CJC0002), para 9

Enforcement of judgments

31. Witnesses were equally positive about the BIR's rules on the enforcement and recognition of judgments across the EU.

Box 3: The Brussels I Regulation (recast): enforcement and recognition of judgments

The BIR includes provisions designed to facilitate the enforcement and recognition of judgments. In the areas of civil litigation covered by the Regulation, court judgments delivered by one Member State court must be recognised and enforced in another Member State without additional processes or procedures.[61] There are very limited grounds for refusal.[62]

32. Professor Fentiman said: "There is an advantage in the more or less automatic enforcement of judgments across borders. If you do not have that, you have to rely on the local rules being in force in particular states to enforce that judgment".[63] Richard Lord QC agreed that this aspect of the Regulation was "very important".[64]

33. David Greene, speaking on behalf of the Law Society of England and Wales, said: "On enforcement, the certainty that we have with [the BIR] is that we can enforce the judgment that we secure in another jurisdiction".[65] Dr Helena Raulus, who also spoke on behalf of the Law Society of England and Wales, praised the BIR's "near-automatic procedures", whereby judgments and decisions are recognised in other countries. She concluded that in this regard all three Regulations provided "cost-effectiveness".[66]

34. Professor Steve Peers, of the University of Essex, also focused on these provisions: "To tell someone suing … that they could face another year or two to get enforcement of their ruling and significant extra costs is a burden and a potential deterrent to doing cross-border business".[67]

61 Articles 36–44 of the Brussels 1 Regulation (recast)
62 Article 45 of the Brussels 1 Regulation (recast)
63 Q 5
64 Q 14
65 Q 22
66 Q 22
67 Q 6

Box 4: Case study 1: the Brussels I Regulation (recast)

A clothes manufacturer in Manchester orders and pays for cotton from a supplier in Greece. When the order arrives, the manufacturer discovers that the quality of the cotton is not of the standard agreed in the contract. The supplier refuses to accept any liability and the manufacturer decides to seek redress through the courts.

The first question to be determined is where the case should be heard. In the absence of any prior agreement as to which country's court should have responsibility for determining a dispute, the jurisdiction rules of the BIR should be used. These state that, in matters relating to a contract, the court with jurisdiction will generally be in the place of performance of the obligation in question. In the case of the sale of goods, that is the place where the goods were delivered or should have been delivered. In this case, that is England. It is for the court rules in England and Wales to determine which court can be used.

The second question is which law should apply to the case. The Rome I Regulation (see Box 16) helps to provide the answer. If the contract includes a 'choice of law provision', that provision would generally apply. However, if the contract includes no such provision, the law governing the contract for a sale of goods is generally that of the country where the seller is based.

As there was no agreement on jurisdiction or choice-of-law in the contract in question, the clothes manufacturer can bring his case in a court in Manchester and the dispute will be determined under Greek law.

The case itself proceeds in the English court with an expert witness advising on Greek law. If the court finds for the clothes manufacturer, he can use the BIR to have the judgment recognised for enforcement in Greece.

Source: HM Government's Review of the Balance of Competences between the United Kingdom and the European Union: Civil Judicial Cooperation

The Minister's view of the BIR

35. The Minister told us that since the result of the referendum the Government had consulted on all three Regulations, with a range of interested parties including judges, lawyers, academics and consumer groups. With regard to the BIR, the message that the Government had received from this process was that post-Brexit "an effective system of cross-border judicial cooperation with common rules is essential to embed certainty and predictability for businesses particularly for those with a commercial aspect".[68]

36. The Minister recognised that the BIR was "important", and explained that in the Government's view, "the content … is key, especially with regard to mutuality and reciprocity". He understood that the "great advantage" of the BIR was that "we know that other countries will follow the same rules as we do".[69] He suggested that it was "too early to say what extent [the BIR] will feature in any agreement" between the UK and the EU, but acknowledged that "these are important principles that will form part of the negotiations".[70]

37. **The predictability and certainty of the BIR's reciprocal rules are important to UK citizens who travel and do business within the EU. We endorse the outcome of the Government's consultations, that an**

68 Q 38
69 Q 39
70 Q 38

effective system of cross-border judicial cooperation with common rules is essential post-Brexit.

38. **We also note the Minister's confirmation, in evidence to us, that the important principles contained in the Brussels I Regulation (recast) will form part of the forthcoming negotiations with the remaining EU Member States.**

Potential problems if the UK leaves the BIR without alternative arrangements in place

Loss of certainty

39. Richard Lord QC was concerned that after Brexit, without the BIR or alternatives in place, there would be a loss of certainty: "The point is that businesses, and indeed individuals, like certainty and predictability." He said that at present:

> "If an English jurisdiction clause is inserted, that will be recognised … It might not be recognised if we lose the Regulation. Similarly, even if there is no jurisdiction clause, currently with this reciprocal system you are not likely to have two courts both saying, 'I have jurisdiction'. If we lose that, you might have all sorts of problems with courts losing jurisdiction."[71]

He concluded that, post-Brexit, and without a reciprocal alternative arrangement with the EU, "those who trade with Europe risk all sorts of problems".[72] Professor Jonathan Harris expressed similar concerns: "One would not have the same rules in the rest of the European Union, and one would have the attendant risk of parallel proceedings in other courts that could lead to inconsistent results."[73]

Impact on London's legal market

40. In its written submission, the Law Society of England and Wales pointed to "anecdotal evidence" of foreign businesses already being discouraged from using choice-of-court agreements that name "England and Wales as the jurisdiction of choice in commercial contracts" (see Box 5). If this trend continued, the Law Society anticipated a "detrimental [impact on] the legal services sector in England and Wales and the economic contribution it makes to the UK economy".[74]

71 Q 14. See also Box 6 on the problems of parallel proceedings.
72 Q 14
73 Q 15
74 Written evidence from the Law Society of England and Wales (CJC0001), para 4

Box 5: Choice-of-court agreements

The BIR allows parties with a particular legal relationship to agree a specific jurisdiction for any dispute arising from that relationship (Article 25). These so-called choice-of-court agreements will be respected if the agreement is:

(1) in writing or evidenced in writing;

(2) in a form which accords with practices which the parties have established between themselves; or

(3) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

The *lis pendens* rule in the Brussels I Regulation (see Box 6) could formerly be used (or abused) to frustrate these agreements. The reforms enacted in the BIR in 2012 brought the use of this tactic to an end.

The Hague Convention on choice-of-court agreements is discussed in Box 15.

41. Oliver Jones argued that the potential loss of the Regulation posed "a clear and present threat to the ability of [the Regulation's] jurisdictional rules to protect people", and he too feared for London's pre-eminence "as a legal market".[75] He called on the Government to make a clear announcement that "proceedings commenced under the current regime … will apply until it changes", and hoped that "our partners in Europe" could sign up to this approach.[76]

42. Professor Fentiman expressed similar concerns about "the current degree of uncertainty" over which rules will apply after the UK leaves the EU. Despite seeing a viable alternative in the common law rules[77] (see paragraph 103 below), he also believed that leaving the BIR posed an immediate threat "to the legal regulation of cross-border disputes and to the [UK's] market for legal services". He argued that "some decision should be made and some clarity offered now as to what the position would be post-Brexit".[78]

43. Professor Peers also anticipated an impact on the UK legal market: "There is a risk … that people in the European Union will think this is an opportunity to divert or prevent business". He posed a question: "What about every case that is pending on Brexit day? Do they continue under the rules of the EU regime? The same would apply to anything pending on the continent with British involvement or potential relevance for enforcement".[79]

75 Q 15
76 Q 19
77 Use of the term "common law" in this report, refers to the case law of the UK courts dealing with jurisdiction and the recognition and enforcement of judgments.
78 Q 1
79 Q 4

Box 6: *Lis pendens* and parallel proceedings

The original Brussels I Regulation, agreed in 2002 but replaced in 2012 by the recast BIR, attracted criticism for its rigid adherence to the *lis pendens* (proceedings pending) rule. This rule provided that where proceedings involving the same cause of action between the same parties were brought in the courts of different Member States, any court other than the court first seised must stay its proceedings until such time as the jurisdiction of the court first seised was established.[80] The rule was developed to avoid parallel proceedings and to minimise the risk of incompatible judgments on the same facts from differing jurisdictions.

However, the rule gave rise to two related problems that the most recent amendment of the BIR sought to solve. First, as confirmed by the CJEU in its case law, the rule had to be applied rigidly, regardless of whether the proceedings first instituted were commenced with a genuine wish to pursue them to judgment, or with any genuine belief or prospect of maintaining that the court in which they were instituted had jurisdiction under the Regulation. Second, and in a large measure as a result, the rule was capable of being used or abused to frustrate or undermine a choice-of-court agreement (see Box 5). The practice of frustrating proceedings by issuing them first in Italy's notoriously slow legal system gave this tactic its name: the 'Italian Torpedo'.

In response, the BIR included a new provision, which allowed the Member State court specified in an exclusive jurisdiction clause to proceed to determine a dispute, even if proceedings had been commenced first in another Member State court. This amendment effectively disapplied the 'first-in-time' rule in the original Brussels I Regulation.

Inability to enforce judgments

44. For Sir Richard Aikens the Regulation's importance lay in the rules ensuring "that judgments will be recognised and enforced across Europe". Without these, "Even if you have a jurisdiction system that appears to work it is a major disadvantage if a judgment is produced by an English court that cannot be enforced in other European Union states".[81] Professor Harris QC warned that without the BIR, "we do not have the advantages of the free enforcement of judgments for individuals around the European Union".[82]

45. Richard Lord QC agreed that "any alternative runs the risk of a lack of ability to enforce judgments, and the degree of confusion and uncertainty goes much wider than that … its loss would lead to a risk to businesses and the country generally".[83] Oliver Jones foresaw similar difficulties, and predicted that when UK lawyers were asked if Brexit posed a risk to the enforceability of UK judgments, "they will say, yes there is".[84]

46. Our academic witnesses were more optimistic. Professor Fentiman believed that the potential loss of this aspect of the Regulation would not be "as significant as some people … imagine". While he welcomed the advantages

80 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16 January 2001, pp 0001–0023, Article 27(1) of the original Brussels I Regulation

81 Q 32

82 Q 15

83 Q 14

84 Q 16

of having judgments automatically recognised across Europe, he argued that the potential loss of these rules to the UK did not pose "an existential threat". In his view, "there is a ready, workable solution": the common law.[85] But he acknowledged that the common law offered a "unilateral and not a reciprocal solution"—it would provide certainty for UK courts, but it would not offer "reciprocal obligations as between us and member states of the EU".[86]

47. In relation to legal services, Professor Briggs described the ability to enforce English judgments in EU Member States as a "side issue".[87] In his view, "the inability to enforce an English judgment in other Member states may not be so much of a problem if it can be enforced in England", because, for example, "banks in which [defendants'] assets are found may have branches in London".[88]

48. Dr Louise Merrett, of Cambridge University, argued that the disadvantage would be felt on the continent rather than in the UK, "because their judgments will not be automatically enforceable in England. That will be a disadvantage for other European jurisdictions trying to compete with us".[89] She also believed that if the UK failed to secure an agreement, the common law offered a short-term solution, which "would work well if we did nothing". In the long-term, however, her preferred solution was for the Government "to try to negotiate a reciprocal regime".[90]

49. We consider the utility of the common law as a replacement for the BIR in Chapter 4.

Loss of control over future iterations of this legislation

50. Looking beyond Brexit, Professor Peers warned that "one risk of not being part of the EU system is that it might be changed … to take account of the UK not being part of it any more". He speculated that the remaining EU Member States might develop the system "in such a way that you no longer have the British influence … and that it would develop … as to attract business away from London".[91] For example, he said: "One way … is to make enforcement more difficult than it is at the moment … by raising additional barriers".[92]

51. Oliver Jones agreed: "If we lose a system like the current regime, we are very much at the mercy of whatever national rules other member states may choose to adopt in relation to us".[93]

52. **While academic and legal witnesses differed on the post-Brexit enforceability of UK judgments, it is clear that significant problems will arise for UK citizens and businesses if the UK leaves the EU without agreement on the post-Brexit application of the BIR.**

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85 Q 5
86 Q 1
87 Written evidence from Prof Briggs (CJC0002), para 45
88 Written evidence from Prof Briggs (CJC0002), para 42
89 Q 3
90 Q 4
91 Q 2
92 Q 2
93 Q 14

53. **The evidence provided to us suggests that the loss of certainty and predictability resulting from the loss of the BIR and the reciprocal rules it engenders will lead to an inevitable increase in cross-border litigation for UK based citizens and businesses as they continue to trade and interact with the remaining 27 EU Member States.**

54. **We are concerned by the Law Society of England and Wales' evidence that the current uncertainty surrounding Brexit is already having an impact on the UK's market for legal services and commercial litigation, and on the choices businesses are making as to whether or not to select English contract law as the law governing their commercial relationships.**

55. **The Government urgently needs to address this uncertainty and take steps to mitigate it. We therefore urge the Government to consider whether any interim measures could be adopted to address this problem, while the new UK-EU relationship is being negotiated in the two year period under Article 50.**

The Great Repeal Bill—a solution?

56. The Government has promised that the Great Repeal Bill (GRB) will provide legal certainty after the UK's exit from the EU, and will "ensure that all EU laws which are directly applicable in the UK (*such as Regulations*) … remain part of domestic law on the day we leave the EU" (emphasis added).[94]

57. Professor Fentiman doubted the utility of the GRB to address the loss of the BIR post-Brexit. He argued that the GRB would not be "appropriate to implement aspects of the current EU regime in this area as domestic legislation". The reason was "very simple": the BIR maintained "rules that in their nature operate in a reciprocal way, but there would be no reciprocity post-Brexit if we were simply to include these rules in national legislation".[95]

58. Professor Briggs agreed. The BIR required "reciprocal action on the part of the other states … [there] is no law which the United Kingdom can enact to render English judgments entitled to recognition and enforcement in the rest of Europe".[96]

59. The Minister sought to provide reassurance. He suggested that the "great advantage"[97] of the BIR lay in its reciprocal rules, and stated that the Great Repeal Bill would "ensure that all existing EU law that applies in our country, the *acquis* as it is known, will be imported into UK law". There would be no "hiatus" in coverage, and "we will not have a gap".[98]

60. **The evidence we received is clear and conclusive: there is no means by which the reciprocal rules that are central to the functioning of the BIR can be replicated in the Great Repeal Bill, or any other national legislation. It is therefore apparent that an agreement between the EU and the UK on the post-Brexit application of this legislation will**

94 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, Cm 9417, February 2017, p 10: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 27 January 2017]

95 Q 1

96 Written evidence from Prof Briggs (CJC0002), para 10

97 Q 39

98 Q 40

be required, whether as part of a withdrawal agreement or under transitional arrangements.

61. **The Minister suggested that the Great Repeal Bill will address the need for certainty in the transitional period, but evidence we received called this into question. We are in no doubt that legal uncertainty, with its inherent costs to litigants, will follow Brexit unless there are provisions in a withdrawal or transitional agreement specifically addressing the BIR.**

Which alternative jurisdictions gain from the current uncertainty

62. We have already cited the Law Society's "anecdotal evidence" that Brexit has introduced a degree of uncertainty into the application of the BIR to choice-of-court agreements in the UK. This, in turn, has placed a question mark over the legal protection conferred on UK-based citizens and businesses, and over London's pre-eminence as a legal market. We asked our witnesses which jurisdictions might gain from this uncertainty.

63. Richard Lord QC warned that "a regime in future that is inherently uncertain is on the whole bad for business and for Britain. Uncertainty about how uncertain it will be compounds that".[99] He suggested that "Paris, Hamburg or Rotterdam" might gain from this uncertainty.[100]

64. Hugh Mercer QC for the Bar Council predicted that litigants "may well go to the Netherlands or possibly Germany, although there the English-language courts have had rather modest success". He suggested that "global litigation … could be Paris, Geneva or Stockholm or New York … or Singapore, which is putting in a big pitch, or Dubai".[101]

65. Building on the Law Society's written evidence, Dr Helena Raulus said that "post the EU referendum [other jurisdictions] look at the UK's and the English courts' jurisdiction as only one of the options at this point, not as an automatic option as previously".[102] She continued: "We have seen a move to grab—if you want to use that word—commercial litigation for the continental courts. The Dutch, for example, are building a commercial court that also operates in English."[103]

66. Our witnesses also saw arbitration as a chief beneficiary. Hugh Mercer QC said that arbitration "could still be London",[104] and Sir Richard Aikens agreed: "Ultimately … the beneficiaries might actually be the arbitrators … You can specify arbitration in London, Geneva or wherever, have whichever law you want … and you can enforce it under the New York Convention … there is no problem."[105]

67. Oliver Jones agreed: "My personal view of who will win out is … the arbitration centres", in particular given the New York Convention on the universal enforceability of arbitration decisions (see Box 7). But he warned that greater recourse to arbitration would come at a cost to the wider legal system: "Arbitration takes place in private—it is not an open, public

99 Q 19
100 Q 16
101 Q 24
102 Q 24
103 Q 24
104 Q 24
105 Q 34

hearing—and the more we push towards an arbitration centred model, the more we lose open justice and the rule of law."[106]

Box 7: The New York Convention[107]

The 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (sometimes referred to as the 'New York Arbitration Convention' or the 'New York Convention') applies to the recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration. Thus it performs a similar but considerably more limited role as the BIR. It requires its signatories to recognise arbitration agreements (Article II) and enforce them in accordance with each State's national rules (Article III). It also includes rules dealing with the procedures for recognition (Article IV).

68. In response to these concerns, the Minister argued that "UK law, particularly English law, is renowned across the globe". In the Minister's view, "We are a very important legal power … and my feeling is that although we need to reach a sensible agreement we should not be too nervous about our future." He did not believe that "we will fall down the rankings [because] we are a world brand in this area". He also asserted that "we are the world leader in commercial arbitration".[108]

69. **The evidence suggests that jurisdictions in other EU Member States, and arbitrators in the UK, stand to gain from the current uncertainty over the post-Brexit application of the BIR, as may other areas of dispute resolution.**

70. **With regard to arbitration, we acknowledge that the evidence points to a gain for London. But, we are also conscious of the evidence we heard on the importance of the principles of justice, in particular openness and fairness, underpinned by the publication of judgments and authorities, which are fundamental to open law. It is our view that greater recourse to arbitration does not offer a viable solution to the potential loss of the BIR.**

106 Q 16

107 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958): http://www.newyorkconvention.org/english [accessed 27 January 2017]

108 Q 43

CHAPTER 3: THE BRUSSELS IIA REGULATION AND THE MAINTENANCE REGULATION

Background

71. Brought forward by the Commission under the auspices of the AFSJ, and in response to specific calls from the European Council, both the Brussels IIa Regulation (BIIa) (see Box 8) and the Maintenance Regulation (MR) (see Box 9) set out rules dealing with jurisdiction and the enforcement and recognition of judgments in the area of family law. The UK Government chose to participate in both Regulations. Professor Rebecca Bailey-Harris, of 1 Hare Court, pointed out that these Regulations applied "in a completely different sphere from commercial litigation", because they dealt with "individuals".[109]

72. The BIIa addresses: divorce, legal separation, marriage annulment, and parental responsibility including rights of custody, access, guardianship, and placement in a foster family or institutional care. The MR's rules address matters relating to maintenance obligations.

73. The BIIa is currently the subject of a renegotiation in the Council, and the Government confirmed that it had decided to opt into this latest process on 27 October 2016.[110] Former Court of Appeal judge, the Rt Hon Sir Mathew Thorpe, welcomed the Government's "very significant" decision, "because there is no doubt that [the renegotiation] … will result in a stronger and modernised Regulation".[111]

74. The Minister told us that shortly after he joined the Government he had had to decide whether to opt into the renegotiation of the BIIa. He believed the UK should opt in, "because it is a good system that helps with the arrangements for children and with matrimonial matters".[112]

The Regulations

75. Mr Tim Scott QC, who gave evidence on behalf of the Bar Council, explained the rationale of the two Regulations: "There are 3 million citizens of other member states living in the UK and 1.23 million UK citizens living in other member states". A certain proportion of these citizens would experience contentious family breakdown, and both Regulations provided certainty to "ordinary citizens", which was "most valuable" and "vital".[113]

109 Q 7
110 The EU Justice Sub-Committee retains the proposal under scrutiny.
111 Q 30
112 Q 41
113 Q 22

Box 8: The Brussels IIa Regulation (BIIa)

The BIIa sets out the system for establishing jurisdiction in relation to divorce, legal separation and the annulment of marriage.[114] It provides that an individual may take a matrimonial action in the courts of the Member State where one or both parties to the marriage are or were habitually resident or the Member State of the parties' common nationality or domicile; legal action may therefore be possible in a number of Member States.[115]

Further, once proceedings have started in the first Member State, subsequent courts in the other Member States must refuse jurisdiction (sometimes referred to as the first-in-time-rule). This can give rise to the problem of parallel proceedings, namely proceedings pending in different courts in two or more Member States (abolition of this rule was a key amendment made by the BIR in the context of civil and commercial litigation). There is a risk of litigants using or abusing the system to frustrate proceedings issued in competing jurisdictions, particularly as it can encourage parties to race to be the first to issue proceedings in the most advantageous jurisdiction (see Box 6). Some also view it as a deterrent to the use of alternative dispute resolution and other non-court reconciliation schemes.

Finally, the Regulation provides a framework for the automatic recognition of divorces concluded in other EU Member States, without the need for any special procedure.[116] Parties do not need to go to court to have a decision from another Member State's court recognised. However, an interested party may ask a court not to recognise a decision and the court may do so if the decision is clearly contrary to public policy; contradicts another decision; or if there were procedural defects, for example, one party was not served with the relevant papers and so did not attend court.[117] The court is not entitled, however, to hear an appeal against the original decision.

The Regulation also deals with matters of parental responsibility, including rights of custody, access, guardianship, and placement in a foster family or institutional care. It may also apply to measures involving the child's property, if these are related to the protection of the child. It applies to all decisions made by courts in matters of parental responsibility, not just those arising in relation to matrimonial proceedings. Parents do not need to be married to each other or be the child's biological parents. As well as court judgments, the Regulation can apply to agreements between parents that are enforceable in the country where they are made. It covers jurisdiction, recognition and enforcement, co-operation between central authorities, and specific rules on child abduction and access rights.

114 Council Regulation (EC) No 2201/2003 of 27 November 2003, concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 OJ L 338, 23 December 2003, pp 0001–0029, (Brussels IIa Regulation) (Article 3)

115 Article 3 of the Brussels IIa Regulation

116 Article 21 of the Brussels IIa Regulation

117 Article 22 of the Brussels IIa Regulation

The Regulation provides that the most appropriate forum for matters of parental responsibility is the relevant court of the Member State where the child is habitually resident.[118] Habitual residence is not defined, but the Regulation's guidance notes state that a person cannot be habitually resident in more than one country at the same time; in the case of children, this is usually straightforward to ascertain.

Articles 40 and 41 provide that a child can maintain contact with all holders of parental responsibility by ensuring that a judgment on access rights, or the return of a child following abduction, are directly recognised and enforceable in Member States. The Regulation creates a system of co-operation between central authorities to facilitate communications and any agreements reached between the parties. Further, judgments given in one Member State must be recognised and enforced in any other, save where:

- this would be manifestly contrary to the State's public policy;
- the child was not given an opportunity to be heard;
- the judgment was given in the absence of a person not served with the documents in a timely and appropriate way; or
- a person claiming an infringement of their parental responsibility was not given an opportunity to be heard.

The Regulation also deals with child abduction (the unlawful removal or retention of a child). Where a child is abducted to another Member State, the person having custody of the child may apply to the State to which the child has been abducted for their return.[119] The request can only be refused in limited circumstances. In general there must be an order for the immediate return of the child.[120]

Access rights are directly enforceable in other Member States. If the court issuing the order also issues a certificate, it is not necessary to seek a declaration that the rights are enforceable from a court in another Member State; the judgment will be treated as a judgment of any other Member State.[121]

76. Sir Mathew Thorpe said that "there is so much to be said in favour" of the BIIa, and he praised the EU's "laudable ambition to achieve better justice for European citizens where issues cross the border of Member States". In his view, the Regulation had been "broadly successful".[122]

77. David Williams QC focused on the Regulation's contribution to child welfare: "The protection that [the Regulation] has given children by creating a link between them and the country rather than between the adults and the country certainly serves their best interests".[123] Jacqueline Renton, of 4 Pump Court, argued that the BIIa had "certainly streamlined jurisdiction and the enforcement of orders in a children context", adding that it had

118 Article 8 of the Brussels IIa Regulation
119 Articles 10 and 11 of the Brussels IIa Regulation
120 Also of relevance in this regard are: The Hague Convention 1980 on the civil aspects of child abduction and The Hague Convention (1996) on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children apply.
121 Article 41 of the Brussels IIa Regulation
122 Q 30
123 Q 7

"provided much more certainty as a framework for children cases than we had before".[124]

Box 9: The Maintenance Regulation

The EU Maintenance Regulation establishes similar rules on jurisdiction, recognition and enforcement of decisions in matters relating to maintenance obligations.

It is designed to enable a maintenance creditor (an individual to whom maintenance is owed or alleged to be owed) easily to obtain in one Member State a decision that will be automatically enforceable in another without further formalities. It also establishes jurisdiction for the making of maintenance decisions.[125] The Regulation enables parties to a dispute to agree jurisdiction if they wish (with choices to be based on the habitual residence of one of the parties or the place of last common habitual residence or the court of the Member State of which one party is a national).[126] This freedom to agree does not apply, however, in cases involving maintenance for a child.

The Regulation also includes a *lis pendens* rule (first-in-time rule), potentially giving rise to the 'Italian Torpedo' problems highlighted in Box 6.[127]

Unlike the the BIR and BIIa, the Maintenance Regulation includes rules on the applicable law, namely, which Member State's law should be applied to a particular dispute (Article 15). It provides that the applicable law for maintenance obligations should be determined in accordance with the Hague Protocol of November 2007. This aspect of the Maintenance Regulation does not apply to the UK, which applies English law to maintenance cases. There is a cost to the enforceability of English decisions because they will not be automatically recognised in another State if they are manifestly contrary to public policy in that State, or where a decision was given in default of appearance, or the decision is irreconcilable with an earlier decision given in another jurisdiction.[128]

78. David Williams QC said that the BIIa had "transformed the way family law has operated over the last 11 years". The Regulation had "overlaid all our pre-existing domestic legislation", and had "spread into every area of our domestic law".[129]

79. Professor Rebecca Bailey-Harris agreed, describing both Regulations as "incredibly important", because they provided "certainty and effectiveness for individuals—children and their parents and adult partners—across what is a very global Europe".[130]

The Minister's view

80. The Minister described the BIIa in particular as "very important". He acknowledged that without the "mutuality and reciprocity" introduced by these Regulations there was the danger of "parallel proceedings in different

124 Q 7
125 Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10 January 2009 (The Maintenance Regulation) (Article 3)
126 Article 4 of the Maintenance Regulation
127 Article 12 of the Maintenance Regulation
128 Article 24 of the Maintenance Regulation
129 Q 7
130 Q 7

countries over family matters … that would create a range of problems". He felt that apart from being chaotic, "one party could exercise an economic dominance over another, whereas, if there is one set of proceedings in one country under one set of rules, that is less likely". He confirmed that their "content will have to be part of the negotiations", but was "not necessarily saying that we will argue for these Regulations".[131]

81. **In dealing with the personal lives of adults and children, both the Brussels IIa Regulation and the Maintenance Regulation operate in a very different context from the more commercially focused Brussels I Regulation (recast).**

82. **These Regulations may appear technical and complex, but the practitioners we heard from were clear that in the era of modern, mobile populations they bring much-needed clarity and certainty to the intricacies of cross-border family relations**.

83. **We were pleased to hear the Minister recognise the important role fulfilled by the Brussels IIa Regulation and confirm that the content of both these Regulations will form part of the forthcoming Brexit negotiations.**

Box 10: Case study 2: the Maintenance Regulation

An English woman and an Italian man marry in England and have a son. Their relationship breaks down and they divorce in England. The father agrees with the mother that he will pay maintenance for the child. After the divorce, the father returns to Italy. Mother and child are living in England. He then refuses to make the maintenance payments as previously agreed. The mother decides that the only way to get the money owed is to go to court—but which court to go to and what is the most effective route to use?

Under the EU Maintenance Regulation 4/2009 the mother, who is the creditor, can apply to the court in England and Wales for a maintenance order, then apply to the England and Wales Central Authority (and, through that, the Italian Central Authority) for the enforcement in Italy of the court order from England and Wales for the payment of maintenance by the father, who is the debtor.

Alternatively, under the EU Maintenance Regulation the mother can apply, through the two Central Authorities, to a court in Italy for an order for maintenance. The Central Authorities will deal with any translation requirements. Enforcing an Italian order might be more effective than seeking enforcement of an English order.

Source: HM Government's Review of the Balance of Competences between the United Kingdom and the European Union: Civil Judicial Cooperation

Potential problems if UK leaves the BIIa and the MR without alternative arrangements in place

Loss of certainty and predictability

84. Having praised the contribution these Regulations make to the lives of "ordinary citizens" living in the EU, Mr Tim Scott QC said that he "would be very concerned indeed if [the Regulations] were to be lost" post-Brexit.[132]

131 Q 39
132 Q 22

85. David Williams QC feared the loss of the uniformity introduced by the Regulations, which is underpinned by the CJEU. He said the remaining Member States would "carry on interpreting and applying [these Regulations] with the assistance of the CJEU", while the UK would be applying the 1996 Hague Convention on parental responsibility and protection of children (see Box 11). If this happened, he predicted a detrimental impact on children: it would be "like having a Windows operating system and an Apple operating system: they just do not talk to each other".[133]

86. Professor Bailey-Harris also feared the loss of uniformity, which was "a real danger across the board". For example, "the standard concept of habitual residence, that applies to children, divorce and maintenance. There is a real danger of slipping back into a lack of uniformity".[134]

Box 11: The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

The 1996 Hague Convention, which has a similar scope to the BIIa, sets out uniform rules determining which country's authorities are competent to take measures of child protection. It seeks to avoid legal and administrative conflicts, and builds a structure for effective international co-operation in child protection matters between the different systems. The Convention places primary responsibility on the authorities of the country where the child has his or her habitual residence, but the Convention also allows any country where the child is present to take necessary emergency or provisional measures of protection.

The Convention includes rules determining which country's laws are to be applied, and it provides for the recognition and enforcement of measures taken in one Contracting State in all other Contracting States. Among many matters, the Convention addresses custody and contact disputes, the treatment of unaccompanied minors, care of children across frontiers, and provisions dealing with the exchange of information and collaboration between national administrative child protection authorities in the different Contracting States.

All EU Member States have ratified the Convention, but within the EU the BIIa specifically takes precedence.[135]

Enforcement of court decisions

87. Mr Tim Scott QC raised "the question of enforcement under both Brussels IIa and the Maintenance Regulation. There are provisions for ready enforcement, and again it would be a big loss if we were to lose them".[136] Sir Mathew Thorpe agreed:

> "In family law, it is … true that the enforcement of orders is absolutely crucial … It is no good obtaining a judgment here in London in relation to contact with children in Spain if that is not enforceable in the country of habitual residence."[137]

133 Q 12
134 Q 9
135 Article 61 of the Brussels IIa Regulation
136 Q 22
137 Q 32

88. Professor Rebecca Bailey-Harris focused on the potential loss of the MR:

> "Maintenance cases are not about high-wealth individuals; they are often about children needing maintenance from a parent. If the parent goes off somewhere else in Europe, it is extremely difficult reciprocally to enforce maintenance without the proper arrangements."

She argued that this aspect of the MR "really needs to be salvaged in negotiations [because children's] financial rights are actually very important".[138]

Loss of provisions on child abduction

89. David Williams QC said that "one of the most significant deficits" would be the loss of the child abduction protections in the BIIa (see Box 12). Without them, he was clear that "serious problems will arise and some children … will suffer very serious consequences". He noted that "unremedied child abduction" led to mental health problems, and while he acknowledged that "there may not be many in England", he believed that the few British children who would suffer because of the loss of this EU legislation were "a few too many".[139]

Box 12: Case study 3: the Brussels IIa Regulation

An unmarried couple are living in Wales with their four-year old daughter. The father has parental responsibility. The relationship breaks down and the couple split up, but all the family remain in Wales, with the parents sharing residence and contact with the child between them. One day, the mother fails to return the child to the father when expected. It is discovered that the mother has fled with the child to Poland with her new partner. Having failed to persuade the child's mother to return the child, the father knows that he needs to go to court to get his daughter back to Wales—but which court to go to and what is the most effective route to use?

Under the 1980 Hague Convention on civil aspects of international child abduction, the father could apply, through the England and Wales Central Authority and the Polish Central Authority, to the Polish court to make an order for the return of the child. The mother might tell the court in Poland that there is a grave risk that return would expose the child to harm, because the child would be affected by emotional abuse. The Polish court might then decide to make a non-return order.

Brussels IIa mostly deals with jurisdiction, recognition and enforcement of judgments. It also has provisions about child abduction that change the way the 1980 Hague Convention operates between EU Member States. Under the 1980 Hague Convention rules, a non-return order ends the case and the child stays where he or she has been taken. But under Brussels IIa, the court in Poland must send the papers to the court in Wales. The court in Wales, because the child lived in Wales before the abduction, can consider the case, provided the father asks the court to do so within the time limit. If the court decides the child should be returned, the Welsh court order will mean the child will come back to Wales despite the earlier decision of the Polish court.

Source: HM Government's Review of the Balance of Competences between the United Kingdom and the European Union: Civil Judicial Cooperation

138 Q 12
139 Q 8

Loss of domestic application

90. Professor Bailey-Harris pointed out that, in contrast to the BIR, in the area of UK family law, these Regulations are "our domestic law". She warned that "We are not just talking about reciprocity and international cases … [Article 3 of the BIIa] is our domestic divorce law, the court of first call, and similarly with the Maintenance Regulation, whether it is a case with an international dimension or not". She told us that "if I were being divorced … it is Article 3 of [the BIIa] that is the domestic law. That is a fundamental issue."[140]

Impact on family court system

91. On behalf of the Bar Council, Mr Tim Scott QC was concerned that the loss of these Regulations would have a considerable impact on the workload of the family courts and predicted that a "potentially very large number of cases will be imposed on an already fully stretched family court". He argued that a lot of this work "is done by lay magistrates and district judges, who are not aware on a day-to-day basis that they are operating EU Regulations, although, in fact, every case that comes before them is based on EU Regulations". He warned that "if we lose the EU Regulations, there will be a massive retraining exercise".[141]

92. **We have significant concerns over the impact of the loss of the Brussels IIa and Maintenance Regulations post-Brexit, if no alternative arrangements are put in place. We are particularly concerned by David Williams QC's evidence on the loss of the provisions dealing with international child abduction.**

93. **To walk away from these Regulations without putting alternatives in place would seriously undermine the family law rights of UK citizens and would, ultimately, be an act of self-harm.**

The Great Repeal Bill—a solution?

94. When asked whether the Government's promised Great Repeal Bill would help avoid any gaps in the legal protection provided by these Regulations, Professor Rebecca Bailey-Harris said "it will not".[142] Jaqueline Renton said that "the issue of reciprocity" would "require more thought".[143] Professor Adrian Briggs stated that as far as the "Regulations on matrimonial and parental matters … and maintenance are concerned, local re-enactment [via the GRB] is impracticable".[144]

95. David Williams QC expressed similar reservations, dismissing the GRB as an "almost worthless" solution. As with the BIR, the fundamental difficulty was the impossibility of replicating the reciprocal arrangements that exist under EU law in a purely domestic statute. The great advantage of the BIIa was its "reciprocal parts";[145] enacting this EU legislation via the GRB would mean that the Regulation would apply domestically, "but in any dispute between England and France you would have the 1996 Hague Convention

140 Q 7
141 Q 23
142 Q 11
143 Q 11
144 Written evidence from Prof Briggs (CJC0002), para 9
145 Q 11

rules applying". He warned us that dealing with the BIIa and the MR via the GRB "would introduce an element of confusion".[146]

96. When these concerns were put to the Minister, he argued that the GRB would provide the solution, because "it will bring into UK law all the laws of the EU that we currently have in force for our country". He acknowledged that there were "some areas of concern", citing the example of matrimonial law, as this "is not covered by the Hague Conventions" (see Box 8). But he believed this would not be a problem, because the GRB "would … bring [matrimonial law] home into our own law from the EU".[147]

97. **It is clear that the Government's promised Great Repeal Bill will be insufficient to ensure the continuing application of the Brussels II and Maintenance Regulations in the UK post-Brexit: we are unaware of any domestic legal mechanism that can replicate the reciprocal effect of the rules in these two Regulations. We are concerned that, when this point was put to him, the Minister did not acknowledge the fact that the Great Repeal Bill would not provide for the reciprocal nature of the rules contained in these Regulations.**

98. **We are not convinced that the Government has, as yet, a coherent or workable plan to address the significant problems that will arise in the UK's family law legal system post-Brexit, if alternative arrangements are not put in place. It is therefore imperative that the Government secures adequate alternative arrangements, whether as part of a withdrawal agreement or under transitional arrangements.**

146 Q 11
147 Q 41

CHAPTER 4: OPTIONS FOR THE FUTURE

99. During our inquiry, witnesses proposed a number of alternative post-Brexit solutions that could mitigate the loss of these Regulations, while taking into account the Government's aim of bringing an end to the CJEU's jurisdiction in the UK (see Box 13).

Box 13: No CJEU/no Danish model

In the area of EU civil law, Denmark enjoys a complete opt out. However, in 2005 the Danish Government signed an international agreement with the then European Community, to participate in both the original Brussels I Regulation and, more recently, the Brussels I Regulation (recast).[148] By virtue of this agreement Denmark must accept the jurisdiction of the CJEU to interpret this legislation, and Danish courts (which, importantly for the purposes of the Treaty's preliminary reference procedure, remain courts "of a Member State"[149]) are obliged to refer questions on the legislation's interpretation to the CJEU (Article 6).

The Government's stated desire to bring an end to the CJEU's jurisdiction in the UK post-Brexit appears to rule out the suggestion made by some witnesses to this inquiry that the UK should seek to emulate the Danish model.[150]

Advice for the Government

Civil and commercial law

100. On behalf of the Bar Council, Hugh Mercer QC told us that "for this area of civil justice co-operation you need a sensible approach". The remaining EU Member States had an interest in their "citizens having certainty in dealing with the UK", while the Government should recognise that "our citizens and our businesses need certainty dealing with the EU". He concluded that "both sides have a really strong mutual interest in making sure that the little guy does not suffer as a result of Brexit when he is involved in cross-border situations".[151]

101. Sir Richard Aikens pointed out that with the movement of people across borders, "and with trade with Europe both being as evident and important as they are, it is inevitable in the civil and commercial sphere that there will be cross-border disputes of all sorts". He argued that to "dismiss from your priorities list the question of how we are to deal with cross-border disputes seems to me to be, with respect, irrational, so I hope that it is on the list somewhere".[152] The current uncertainty would "create some anxiety", but the solution was simply to "get on and do a deal … it is not beyond the wit

148 Council Decision 2005/790/EC of 20 September 2005 on signing, on behalf of the Community, of the Agreement between the European community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 299/61, 16 November 2005

149 Article 267, Treaty on the Functioning of the European Union

150 See for example, the Rt Hon Sir Richard Aikens at Q 35: "I think the best model is actually the Danish one. I can see no difficulties with it except one: what will be the position of the Court of Justice of the European Union?"; or Professor Rebecca Bailey-Harris at Q 12: "the Bar Council's position, in both general civil law and family law, is to attempt to negotiate something like the Denmark jurisdiction agreement, whereby Denmark has not opted straight in to the Regulations but has a special arrangement".

151 Q 27

152 Q 36

of sensible and rational people … and two years should be plenty of time in which to do it".[153]

102. Professor Fentiman, in contrast to all our other witnesses, emphasised the UK's strengths in any negotiation:

> "We would not be negotiating from a position of weakness … we need not be worried about the absence of the EU rules, because if indeed the common-law rules were, post-Brexit, to occupy the space, we would have a well-known and certain body of rules regarded throughout the world as the world-leading rules in that area. There is no need for urgency."[154]

Family law

103. David Williams QC said that his "first choice would be to maintain Brussels II or the recast Regulation—whatever shape that eventually takes—in force as part of the negotiation, if we could", but he acknowledged that "that necessarily involves the Court of Justice of the European Union having the interpretive role". He therefore hoped that a way could be found to maintain these Regulations, while "cutting out the CJEU … because that is what is in the interests of children".[155]

104. Tim Scott QC sought a similar goal. He said that the two Regulations were "mutually beneficial for all member states", and argued that "for the stability of families and the welfare of children across the EU it is important to preserve this framework". He believed that the stability provided by the two Regulations would make this solution "easy to sell at an emotional/political level to the British people".[156]

105. Sir Mathew Thorpe made a simple plea to the Government: "Do not overlook the importance of family law."[157]

Non-CJEU alternatives for the BIR

Do nothing: the common law will suffice

106. Professor Richard Fentiman argued that, in the immediate aftermath of Brexit, "we do not need … to do anything other than allow the common law rules to fill the space".[158] He believed that when the BIR fell away, "there will not be a vacuum; it will simply be the case that the widely used [common law] rules, which are considered around the world as state of the art … would simply occupy the space vacated by the EU regime". In this way, "there would be no loss of performance post-Brexit. The courts and litigants will be able to continue and the rules that would be used are very satisfactory".[159]

107. We put Professor Fentiman's view to our other witnesses. Former Court of Appeal judge the Rt Hon Sir Richard Aikens accepted that "you could go back". But this "would not be satisfactory, it would create an enormous amount of uncertainty, and for all areas of the law it would not be helpful".[160]

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153 Q 34
154 Q 1
155 Q 12
156 Q 27
157 Q 37
158 Q 1
159 Q 1
160 Q 30

108. Richard Lord QC felt that falling back on the common law rules would not be "an absolute disaster", but would be a "retrograde step and [would] cause difficulty". He concluded that it was not "a realistic or practical option";[161] it would be a "recipe for confusion, expense and uncertainty".[162]

109. Oliver Jones said he "could not disagree more" with Professor Fentiman.[163] He rejected the suggestion that "we could or should be relaxed about simply leaving the current regime and putting nothing else in place and allowing the common law to return to a judicial space from which it has been on hiatus for the past 30 years". This "does not tally with the views of anyone I have spoken to in the London legal market".[164]

110. David Greene, on behalf of the Law Society, agreed. The common law "might provide answers … but the world has moved on a bit in 40 years. We have moved to a much more international and more European-focused United Kingdom."[165] In his view, "the development of common law is a very expensive process … We would be going back all those years and trying to develop the common law quite quickly to meet modern conditions". He concluded: "That is the problem with going back: it has … uncertainty."[166]

111. Hugh Mercer QC, on behalf of the Bar Council, argued that the UK courts would "suffer if we go with the common law".[167] The BIR's rules operated "on the basis of saying, 'In circumstances A, B and C, you go to Italy. In circumstances D, E and F, you go to England'". In contrast, the "common law system will always decide [on a] discretionary basis which is the appropriate court. That means that a defendant who wants to string things out always has the possibility of an argument; he cannot be struck out on that basis and he can always argue the point".[168]

112. He acknowledged that the common law might help deal with judgments from other jurisdictions, but it would not "help with the export of judgments: what happens to English judgments when they arrive in Italy, Spain, Portugal or France".[169] Echoing the Law Society's views on costs, he warned that "oligarchs can always afford the common law", but for "the little guy… certainty and uniformity" were provided by the BIR.[170]

113. The Minister accepted that if the UK were to fall back on to the common law, "we would not have the reciprocity and the mutual agreement" on which the BIR was built. This solution was "certainly not [the Government's] choice".[171]

114. **The balance of the evidence was overwhelmingly against returning to the common law rules, which have not been applied in the European context for over 30 years, as a means of addressing the loss of the Brussels I Regulation (recast). We note that a return to the common law would also not be the Government's choice.**

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161 Q 14
162 Q 15
163 Q 15
164 Q 15
165 Q 22
166 Q 23
167 Q 24
168 Q 23
169 Q 23
170 Q 22
171 Q 39

115. **A return to the common law rules would, according to most witnesses, be a recipe for confusion, expense and uncertainty. In our view, therefore, the common law is not a viable alternative to an agreement between the EU and the UK on the post-Brexit application of the Brussels I Regulation (recast).**

116. **Nonetheless, in contrast to key aspects of the two Regulations dealing with family law, Professor Fentiman was of the opinion that in the event that the Government is unable to secure a post-Brexit agreement on the operation of the Brussels I Regulation (recast), a return to the common law rules would at least provide a minimum 'safety net'.**

Seek UK Membership of Lugano Convention plus Hague Convention on choice-of-court agreements

117. Professor Fentiman also suggested that a long-term solution "might involve … membership of … the Lugano Convention" (see Box 14). He proposed this approach because it would introduce a "degree of uniformity into the process", and "all the evidence surrounding the Lugano Convention … is that having that … soft approach to the CJEU is perfectly workable, and you do not have to submit to its compulsory, mandatory judgments".[172]

118. Professor Peers said that "whatever relationship we might wish to seek with the European Union, the Lugano Convention is clearly there as a precedent".[173] But, he added, the UK would inevitably lose the influence it currently enjoys as an EU Member State, because "we could not influence it by appearing in court … or having a British judge, a British Advocate-General, and so on, as part of the system". On the other hand, it would mean that CJEU could not issue "rulings that will be directly binding on us".[174]

Box 14: The Lugano Convention

The scope of the Brussels regime outside the EU has been extended by the Lugano Convention, concluded on 16 September 1988 between the (then) 12 Member States of the European Community and the (then) six Member States of the European Free Trade Association (EFTA).

Its effect is to create common rules regarding jurisdiction and the enforcement and recognition of judgments across a single legal space consisting of the EU Member States (including Denmark) and, since 2007, three of the four EFTA states (Iceland, Norway and Switzerland: Liechtenstein, which joined the European Free Trade Association in 1991, is not party to the Lugano Convention). The Lugano Convention was given effect in the United Kingdom in 1991.

172 Q 3
173 Q 3
174 Q 3

The Convention covers the same subject matter as the original Brussels I Regulation, which was replaced within the EU in 2012 by the BIR. The Convention, therefore, does not cover the most up-to-date version of the legislation, and retains the inherent shortcomings of the Brussels I Regulation. For example, the problems caused by the rigid application of the *lis pendens* rules (highlighted in Box 6) remain an issue, and the enforcement in the UK of judgments delivered by the courts of Iceland, Norway and Switzerland are subject to an additional registration requirement (Article 38(2)). In this way, the mechanisms for the recognition and enforcement of judgments are not as straightforward as those under BIR. Its rules do, however, cover maintenance-related claims (Article 5(2)), so it could be a replacement for the MR.

Judicial oversight

Protocol 2 of the Lugano Convention deals with the uniform interpretation of the Convention. Under the Protocol, the national courts of Iceland, Norway and Switzerland are not subject to the CJEU's jurisdiction. Instead, "any court applying and interpreting this Convention shall pay due account to … any relevant decision … rendered by the courts of the States bound by this Convention and by the Court of Justice" of the European Union.

119. Sir Richard Aikens argued that if the UK could not remain in the current system, "the answer is to do what is being done with Lugano". He explained that, in effect, there were two systems under the Convention: "If an EU state is involved … it has to go to the CJEU." For the non-EU states, they do "not have to send things to the CJEU [they are] just bound to have regard to the CJEU's decisions on the interpretation" of the Convention".[175]

120. Professor Jonathan Harris QC also suggested that UK participation in the Lugano Convention seemed to be "a more plausible solution [and a] more politically acceptable option". This was principally because "Norway, Iceland and Switzerland are not directly subject to the European Court of Justice's jurisdiction. Their national courts are bound to have regard to [the CJEU's] case law". But he added a *caveat*, that the Lugano Convention was "not quite as good as [the BIR]. It does not have quite as streamlined a procedure for enforcement. The protection against proceedings brought in breach of an English exclusive jurisdiction clause in another member state is not as good." Nevertheless, he concluded, "it is an awful lot better than nothing at all".[176]

121. Richard Lord QC accepted that the easiest solution might well be "to go back to Lugano with this idea … of just paying due regard to" the CJEU. But he also warned that "you would lose some of the additional advantages that you get in Brussels I recast as opposed to Lugano".[177]

122. The Law Society expressed similar views. David Greene said: "We are looking for certainty … we would regard Lugano as the second choice compared with Brussels, but it might be Lugano." His colleague, Dr Helena Raulus, told us: "Of course, as an alternative, it is possible to enter Lugano, but then some of the consumer issues start to fall out." She therefore added that the Law Society "would also encourage amending Lugano".[178]

175 Q 35
176 Q 17
177 Q 18
178 Q 25

123. Alongside membership of the Lugano Convention, various witnesses also proposed UK ratification of the 2005 Hague Convention on choice-of-court agreements (see Box 15). Professor Fentiman described the 2005 Convention as "an important international instrument".[179] Professor Adrian Briggs agreed.[180]

Box 15: 2005 Hague Convention on choice-of-court agreements

The 2005 Hague Convention on choice-of-court agreements seeks to promote the freedom of businesses to agree that a particular court should have jurisdiction to deal with disputes that might arise. It also ensures that judgments of the chosen court are recognised and enforced by other courts. The Convention covers an area which is dealt with, as between EU Member States by the BIR, it is thus a matter of exclusive EU competence, and was ratified by the EU in June 2015.[181]

124. Professor Jonathan Harris QC also suggested ratification of the 2005 Convention, noting that "the UK is already bound by virtue of the EU's ratification and … the UK could ratify in its own right once it leaves the European Union". He suggested that "there would be some advantage to reassuring the public and business if there was an early announcement of an intention to ratify that Convention as soon as the United Kingdom can".[182]

125. Professor Harris also recommended that the Government "announce that if no other deal is forthcoming, the rules in what are currently called the Rome I and Rome II Regulations on choice of law for contractual and non-contractual obligations will be enacted into domestic statute, so at least we would have certainty that choices of English law will continue to operate on broadly the same basis".[183] The Rome I and Rome II Regulations are described in Box 16.

Box 16: Rome I and Rome II

These two Regulations deal with the issue of applicable law, namely in any given legal dispute with an external element which law ought to be applied (for example, the case scenario in Box 4). The Rome I Regulation[184] applies to contractual relations, while Rome II deals with non-contractual obligations.[185]

Because neither of these Regulations relies on reciprocal arrangements, they could be implemented in the UK via the Great Repeal Bill, without the problems described in respect of the three Brussels Regulations.

126. **The combination of UK membership of the Lugano Convention, implementation of the Rome I and II Regulations through the Great Repeal Bill, and ratification of the Hague Convention on choice-of-**

179 Q 1
180 Written evidence from Prof Briggs (CJC0002), para 47
181 Hague Convention on Choice of Court Agreements (2005): https://assets.hcch.net/docs/510bc238-7318–47ed-9ed5-e0972510d98b.pdf
182 Q 16
183 Q 16
184 Regulation No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) OJ L 177/6, 4 July 2008
185 Regulation No 864/2007 of the European Parliament and the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) OJ L 199/40, 31 July 2007

court agreements, appears to offer at least a workable solution to the post-Brexit loss of the BIR.

127. **The inclusion in the Lugano Convention of a requirement for national courts to "pay due account" to each other's decisions on the content of the Brussels I Regulation, without accepting the direct jurisdiction of the CJEU, could be compatible with the Government's stance on the CJEU's status post-Brexit, as long as the Government does not take too rigid a position.**

128. **This approach will come at a cost. In particular, it will involve a return to the Brussels I Regulation, with all its inherent faults, which the UK as an EU Member State succeeded, after much time and effort, in reforming.**

Non-CJEU alternatives for the BIIa and the MR

Do nothing: return to the common law II

129. Sir Mathew Thorpe recalled that prior to the enactment of the BIIa and Maintenance Regulations, the common law principle of *forum conveniens* ruled family law. This principle, which still applies for non-EU cases, involved a "great deal of expensive litigation … in trying to establish which court was the more convenient". He added that "even if litigants can afford all the expenses it … takes up court time".[186]

130. Tim Scott QC agreed, arguing that "there are strong structural and practical reasons" against a return to the common law rules. He argued that if "we were to go back to *forum conveniens* in intra-EU cases … a potentially very large number of cases will be imposed on an already fully stretched family court that is having to relearn the law".[187]

Fall back on alternative international arrangements: the 1996 Hague Convention

131. We also considered alternative international law solutions. David Williams QC accepted that the 1996 Hague Convention (see Box 11) could offer the UK a "default position … provided steps are taken to re-enact it". But, he added, there would be a cost, because the Convention "is not as extensive" in its coverage as the BIIa.[188] As an example, he cited the BIIa's mechanisms for cooperation between national authorities, the European Judicial Network (EJN), and practitioners. The advantage of the BIIa was that "if you are operating in the same system, it makes it much easier to work productively together for the benefit of the child".[189]

132. Jaqueline Renton also highlighted the 1996 Hague Convention's shortcomings: while "there is a backstop on children", it does not "provide a divorce backstop". She also argued that the Convention would provide cover on "jurisdiction … but there will be no reciprocal enforcement; you will effectively be talking to yourself".[190]

133. Professor Rebecca Bailey-Harris recognised that finding solutions to the loss of these two Regulations was a "massive task". She echoed Jacqueline

186 Q 33
187 Q 23
188 Q 7
189 Q 12
190 Q 7

Renton's comments about divorce law, saying that "there is just no … safety net". She therefore suggested that there might be an argument for "enacting the divorce parts of [the BIIa] into domestic legislation and trying to achieve reciprocity by negotiation" with the remaining EU Member States.[191]

The Lugano Convention as a replacement for the Maintenance Regulation

134. Turning to the MR, Professor Bailey-Harris suggested UK membership of the Lugano Convention (see Box 14) as a potential alternative. She noted that "although [the Lugano system] does not have its own court, it takes on the CJEU's jurisprudence as advisory".[192]

135. **In contrast to the civil and commercial field, we are particularly concerned that, save for the provisions of the Lugano Convention on cases involving maintenance, there is no satisfactory fall-back position in respect of family law.**

136. **Our witnesses were unanimous that a return to common law rules for UK-EU cases would be particularly detrimental for those engaged in family law litigation. The Bar Council also suggested that an already stretched family court system would not be able to cope with the expected increase in litigation.**

137. **The Bar Council specifically called for the EU framework in this field to be sustained post-Brexit. But while this may be the optimal solution in legal terms we cannot see how such an outcome can be achieved without the CJEU's oversight.**

138. **Other witnesses suggested the UK rely on the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. But the evidence suggests that this Convention offers substantially less clarity and protection for those individual engaged in family law based litigation.**

The Minister's view

139. The Minister approached our questions regarding the UK's post-Brexit options from two standpoints. First, he emphasised the Government's desire "to make a new agreement, a new relationship, with the EU for the future that is constructive and tackles these important issues".[193] He stated that the Government's "preference is to reach agreement within the two-year period and for it to be implemented thereafter". If this proved impossible with regard to the BIR, he noted that "there are common law rules".[194]

140. As for the BIIa, he recognised that it "was very helpful", but he did not confirm the Bar Council's suggestion that the Regulation's framework should be maintained post-Brexit: "We will not necessarily ask to be in Brussels IIa; we may well make a separate agreement that one hopes has its main provisions".[195]

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191 Q 11
192 Q 9
193 Q 38
194 Q 40
195 Q 42

141. Second, the Minister frequently repeated the Government's view that post-Brexit the CJEU "would not [be] overseeing anything that we do".[196] When pressed on the detail of any post-Brexit arrangements, and the issue of judicial oversight, he said that "other arrangements would have to be made". He acknowledged that there were "existing tools that one could look at, such as Lugano, but we are not at that point". He also suggested other models, such as the EU's trade agreements with Canada and South Korea.[197]

142. **The Minister held fast to the Government's policy that the Court of Justice of the European Union will have no jurisdiction in the UK post-Brexit. We remain concerned, however, that if the Government adheres rigidly to this policy it will severely constrain its choice of adequate alternative arrangements.**

143. **Clearly, if the Government wishes to maintain these Regulations post-Brexit, it will have to negotiate alternative arrangements with the remaining 27 Member States to provide appropriate judicial oversight. But the Minister was unable to offer us any clear detail on the Government's plans. When pressed on alternatives, he mentioned the Lugano Convention and "other arrangements". We were left unable to discern a clear policy.**

144. **The other examples the Minister drew on, Free Trade Agreements with Canada and South Korea, do not deal with the intricate reciprocal regime encompassed by these three Regulations. We do not see them as offering a viable alternative.**

145. **We believe that the Government has not taken account of the full implications of the impact of Brexit on the areas of EU law covered by the three civil justice Regulations dealt with in this report. In the area of family law, we are very concerned that leaving the EU without an alternative system in place will have a profound and damaging impact on the UK's family justice system and those individuals seeking redress within it.**

146. **In the civil and commercial field there is the unsatisfactory safety net of the common law. But, at this time, it is unclear whether membership of the Lugano Convention, which is in itself imperfect, will be sought, offered or available.**

147. **We call on the Government to publish a coherent plan for addressing the post-Brexit application of these three Regulations, and to do so as a matter of urgency. Without alternative adequate replacements, we are in no doubt that there will be great uncertainty affecting many UK and EU citizens.**

196 Q 44
197 Q 44

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The Brussels I Regulation (recast)

1. We acknowledge and welcome the UK's influence over the content of these three EU Regulations which are crucial to judicial cooperation in civil matters and reflect the UK's influence and British legal culture. We urge the Government to keep as close to these rules as possible when negotiating their post-Brexit application. (Paragraph 23)

2. The predictability and certainty of the BIR's reciprocal rules are important to UK citizens who travel and do business within the EU. We endorse the outcome of the Government's consultations, that an effective system of cross-border judicial cooperation with common rules is essential post-Brexit. (Paragraph 37)

3. We also note the Minister's confirmation, in evidence to us, that the important principles contained in the Brussels I Regulation (recast) will form part of the forthcoming negotiations with the remaining EU Member States. (Paragraph 38)

4. While academic and legal witnesses differed on the post-Brexit enforceability of UK judgments, it is clear that significant problems will arise for UK citizens and businesses if the UK leaves the EU without agreement on the post-Brexit application of the BIR. (Paragraph 52)

5. The evidence provided to us suggests that the loss of certainty and predictability resulting from the loss of the BIR and the reciprocal rules it engenders will lead to an inevitable increase in cross-border litigation for UK based citizens and businesses as they continue to trade and interact with the remaining 27 EU Member States. (Paragraph 53)

6. We are concerned by the Law Society of England and Wales' evidence that the current uncertainty surrounding Brexit is already having an impact on the UK's market for legal services and commercial litigation, and on the choices businesses are making as to whether or not to select English contract law as the law governing their commercial relationships. (Paragraph 54)

7. The Government urgently needs to address this uncertainty and take steps to mitigate it. We therefore urge the Government to consider whether any interim measures could be adopted to address this problem, while the new UK-EU relationship is being negotiated in the two year period under Article 50. (Paragraph 55)

8. The evidence we received is clear and conclusive: there is no means by which the reciprocal rules that are central to the functioning of the BIR can be replicated in the Great Repeal Bill, or any other national legislation. It is therefore apparent that an agreement between the EU and the UK on the post-Brexit application of this legislation will be required, whether as part of a withdrawal agreement or under transitional arrangements. (Paragraph 60)

9. The Minister suggested that the Great Repeal Bill will address the need for certainty in the transitional period, but evidence we received called this into question. We are in no doubt that legal uncertainty, with its inherent costs to litigants, will follow Brexit unless there are provisions in a withdrawal or transitional agreement specifically addressing the BIR. (Paragraph 61)

10. The evidence suggests that jurisdictions in other EU Member States, and arbitrators in the UK, stand to gain from the current uncertainty over the post-Brexit application of the BIR, as may other areas of dispute resolution. (Paragraph 69)

11. With regard to arbitration, we acknowledge that the evidence points to a gain for London. But, we are also conscious of the evidence we heard on the importance of the principles of justice, in particular openness and fairness, underpinned by the publication of judgments and authorities, which are fundamental to open law. It is our view that greater recourse to arbitration does not offer a viable solution to the potential loss of the BIR. (Paragraph 70)

The Brussels IIa Regulation and the Maintenance Regulation

12. In dealing with the personal lives of adults and children, both the Brussels IIa Regulation and the Maintenance Regulation operate in a very different context from the more commercially focused Brussels I Regulation (recast). (Paragraph 81)

13. These Regulations may appear technical and complex, but the practitioners we heard from were clear that in the era of modern, mobile populations they bring much-needed clarity and certainty to the intricacies of cross-border family relations (Paragraph 82)

14. We were pleased to hear the Minister recognise the important role fulfilled by the Brussels IIa Regulation and confirm that the content of both these Regulations will form part of the forthcoming Brexit negotiations. (Paragraph 83)

15. We have significant concerns over the impact of the loss of the Brussels IIa and Maintenance Regulations post-Brexit, if no alternative arrangements are put in place. We are particularly concerned by David Williams QC's evidence on the loss of the provisions dealing with international child abduction. (Paragraph 92)

16. To walk away from these Regulations without putting alternatives in place would seriously undermine the family law rights of UK citizens and would, ultimately, be an act of self-harm. (Paragraph 93)

17. It is clear that the Government's promised Great Repeal Bill will be insufficient to ensure the continuing application of the Brussels II and Maintenance Regulations in the UK post-Brexit: we are unaware of any domestic legal mechanism that can replicate the reciprocal effect of the rules in these two Regulations. We are concerned that, when this point was put to him, the Minister did not acknowledge the fact that the Great Repeal Bill would not provide for the reciprocal nature of the rules contained in these Regulations. (Paragraph 97)

18. We are not convinced that the Government has, as yet, a coherent or workable plan to address the significant problems that will arise in the UK's family law legal system post-Brexit, if alternative arrangements are not put in place. It is therefore imperative that the Government secures adequate alternative arrangements, whether as part of a withdrawal agreement or under transitional arrangements (Paragraph 98)

Options for the future

19. The balance of the evidence was overwhelmingly against returning to the common law rules, which have not been applied in the European context for over 30 years, as a means of addressing the loss of the Brussels I Regulation (recast). We note that a return to the common law would also not be the Government's choice. (Paragraph 114)

20. A return to the common law rules would, according to most witnesses, be a recipe for confusion, expense and uncertainty. In our view, therefore, the common law is not a viable alternative to an agreement between the EU and the UK on the post-Brexit application of the Brussels I Regulation (recast). (Paragraph 115)

21. Nonetheless, in contrast to key aspects of the two Regulations dealing with family law, Professor Fentiman was of the opinion that in the event that the Government is unable to secure a post-Brexit agreement on the operation of the Brussels I Regulation (recast), a return to the common law rules would at least provide a minimum 'safety net'. (Paragraph 116)

22. The combination of UK membership of the Lugano Convention, implementation of the Rome I and II Regulations through the Great Repeal Bill, and ratification of the Hague Convention on choice-of-court agreements, appears to offer at least a workable solution to the post-Brexit loss of the BIR. (Paragraph 126)

23. The inclusion in the Lugano Convention of a requirement for national courts to "pay due account" to each other's decisions on the content of the Brussels I Regulation, without accepting the direct jurisdiction of the CJEU, could be compatible with the Government's stance on the CJEU's status post-Brexit, as long as the Government does not take too rigid a position. (Paragraph 127)

24. This approach will come at a cost. In particular, it will involve a return to the Brussels I Regulation, with all its inherent faults, which the UK as an EU Member State succeeded, after much time and effort, in reforming. (Paragraph 128)

25. In contrast to the civil and commercial field, we are particularly concerned that, save for the provisions of the Lugano Convention on cases involving maintenance, there is no satisfactory fall-back position in respect of family law. (Paragraph 135)

26. Our witnesses were unanimous that a return to common law rules for UK-EU cases would be particularly detrimental for those engaged in family law litigation. The Bar Council also suggested that an already stretched family court system would not be able to cope with the expected increase in litigation. (Paragraph 136)

27. The Bar Council specifically called for the EU framework in this field to be sustained post-Brexit. But while this may be the optimal solution in legal terms we cannot see how such an outcome can be achieved without the CJEU's oversight. (Paragraph 137)

28. Other witnesses suggested the UK rely on the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. But the evidence suggests that this Convention offers substantially less clarity and protection for those individual engaged in family law based litigation. (Paragraph 138)

29. The Minister held fast to the Government's policy that the Court of Justice of the European Union will have no jurisdiction in the UK post-Brexit. We remain concerned, however, that if the Government adheres rigidly to this policy it will severely constrain its choice of adequate alternative arrangements. (Paragraph 142)

30. Clearly, if the Government wishes to maintain these Regulations post-Brexit, it will have to negotiate alternative arrangements with the remaining 27 Member States to provide appropriate judicial oversight. But the Minister was unable to offer us any clear detail on the Government's plans. When pressed on alternatives, he mentioned the Lugano Convention and "other arrangements". We were left unable to discern a clear policy. (Paragraph 143)

31. The other examples the Minister drew on, Free Trade Agreements with Canada and South Korea, do not deal with the intricate reciprocal regime encompassed by these three Regulations. We do not see them as offering a viable alternative. (Paragraph 144)

32. We believe that the Government has not taken account of the full implications of the impact of Brexit on the areas of EU law covered by the three civil justice Regulations dealt with in this report. In the area of family law, we are very concerned that leaving the EU without an alternative system in place will have a profound and damaging impact on the UK's family justice system and those individuals seeking redress within it. (Paragraph 145)

33. In the civil and commercial field there is the unsatisfactory safety net of the common law. But, at this time, it is unclear whether membership of the Lugano Convention, which is in itself imperfect, will be sought, offered or available. (Paragraph 146)

34. We call on the Government to publish a coherent plan for addressing the post-Brexit application of these three Regulations, and to do so as a matter of urgency. Without alternative adequate replacements, we are in no doubt that there will be great uncertainty affecting many UK and EU citizens. (Paragraph 147)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Cromwell
Baroness Hughes of Stretford
Lord Judd
Baroness Kennedy of The Shaws (Chairman)
Earl of Kinnoull
Baroness Ludford
Baroness Neuberger
Baroness Newlove
Lord Oates
Lord Richard
Lord Polak
Baroness Shackleton of Belgravia

Declarations of Interest

Lord Cromwell

No relevant interests declared

Baroness Hughes of Stretford

No relevant interests declared

Lord Judd

Family members married to EU nationals and some live in the EU. Otherwise no relevant interests to declare.

Baroness Kennedy of The Shaws (Chairman)

No relevant interests declared

Earl of Kinnoull

Non-practising barrister

Baroness Ludford

No relevant interests declared

Baroness Neuberger

No relevant interests declared

Baroness Newlove

No relevant interests declared

Lord Oates

No relevant interests declared

Lord Polak

No relevant interests declared

Lord Richard

No relevant interests declared

Baroness Shackleton of Belgravia

Solicitor in partnership practising in family law (with large international practice)

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho (Chairman)
Baroness Brown of Cambridge
Baroness Browning
Baroness Faulkner of Margravine
Lord Green of Hurstpierpoint
Lord Jay of Ewelme
Baroness Kennedy of The Shaws
Earl of Kinnoull
Lord Liddle
Baroness Prashar
Lord Selkirk of Douglas
Baroness Suttie
Lord Trees
Lord Whitty
Baroness Wilcox
Lord Woolmer of Leeds

During consideration of the report the following Member declared an interest:

Earl of Kinnoull
Non-practising barrister
Baroness Prashar
Deputy Chair British Council
Non Executive Director Nationwide Building Society
Lord Selkirk of Douglad
Diversified investment portfolio - McInroy and Wood
Income fund managed by third party

A full list of Members' interests can be found in the Register of Lords Interests http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at http://www.parliament.uk/brexit-civil-justice-cooperation/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with a ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

*	Dr Louise Merrett, Reader in International Law, University of Cambridge	QQ 1–5
*	Professor Richard Fentiman, Professor of Private International Law, University of Cambridge	QQ 1–5
*	Professor Steve Peers, Professor of European Union Law and Human Rights Law, School of Law, University of Essex	QQ 1–5
*	Mr David Williams QC, 4 Paper Buildings	QQ 6–12
*	Ms Jacqueline Renton, 4 Paper Buildings	QQ 6–12
*	Professor Rebecca Bailey-Harris, 1 Hare Court	QQ 6–12
*	Professor Jonathan Harris QC, Serle Court Chambers	QQ 13–20
*	Mr Richard Lord QC, Brick Court Chambers	QQ 13–20
*	Mr Oliver Jones, Brick Court Chambers	QQ 13–20
*	Mr David Greene, Edwin Coe LLP, Chair of the Law Society's Legal Affairs and Policy Board	QQ 21–28
*	Dr Helena Raulus, Policy Adviser on the EU Internal Market	QQ 21–28
*	Mr Tim Scott QC, 29 Bedford Row, the Bar Council	QQ 21–28
*	Mr Hugh Mercer QC, Essex Court Chambers, the Bar Council	QQ 21–28
*	The Rt Hon Sir Mathew Thorpe, associate member of 1 Hare Court	QQ 29–37
*	The Rt Hon Sir Richard Aikens, member of Brick Court Chambers	QQ 29–37
*	The Rt Hon Sir Oliver Heald QC, Minister of State for Courts and Justice, Ministry of Justice	QQ 38–46

Alphabetical list of all witnesses

*	The Rt Hon Sir Richard Aikens, member of Brick Court Chambers	
*	Professor Rebecca Bailey-Harris, 1 Hare Court	
	Professor Adrian Briggs, Professor of Private International Law, University of Oxford	CJC0002
*	Professor Richard Fentiman, Professor of Private International Law, University of Cambridge	
**	Mr David Greene, Edwin Coe LLP, Chair of the Law Society's Legal Affairs and Policy Board	CJC0001
*	Professor Jonathan Harris QC, Serle Court Chambers	
*	The Rt Hon Sir Oliver Heald QC, Minister of State for Courts and Justice, Ministry of Justice	
*	Mr Oliver Jones, Brick Court Chambers	
*	Mr Richard Lord QC, Brick Court Chambers	
*	Mr Hugh Mercer QC, Essex Court Chambers, the Bar Council	
*	Dr Louise Merrett, Reader in International Law, University of Cambridge	
*	Professor Steve Peers, Professor of European Union Law and Human Rights Law, School of Law, University of Essex	
**	Dr Helena Raulus, Policy Adviser on the EU Internal Market, the Law Society	CJC0001
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