



## 6 Key Changes to UK Family Laws Post Brexit and Actions to Consider Now

	Family law Issue	Now	After 31 December 2020
1.	<b>Enforcement and Recognition of UK orders in EU</b>	<p>UK orders are recognised and enforceable as though made in the relevant EU country</p> <p>There is no need for prior registration of the order in an EU country before an order can be enforced</p>	<p>This will continue if proceedings are initiated *on or before 31 December 2020</p> <p>Afterwards the process may often still be possible but will be more cumbersome</p> <p>*To be safe it might be as well to interpret 'initiated' to mean 'issued'</p>
<p><b>Urgent action to consider</b></p> <p>If enforcement or recognition of a divorce, financial or other family order is likely to be needed in another EU country, issue proceedings <u>before</u> 31 December 2020.</p> <p>Whilst it might still be possible to do so after 31 December 2020, the procedure is likely to be more cumbersome.</p> <p>In some EU countries (for example if a divorce needs to be recognised in a certain EU Country where alternative legislation for facilitating recognition and enforcement of divorce with the UK does not exist, it might even mean some proceedings need to be re-commenced in the other relevant EU country).</p>			
	Family law Issue	Now	After 31 December 2020
2.	<b>Jurisdiction disputes in divorce (where more than one EU country has valid jurisdictional grounds to issue divorce proceedings and a court must determine where the matter is adjudicated)</b>	<p>The first EU jurisdiction to issue divorce on a valid jurisdictional ground secures jurisdiction over any EU country which issues 'second in time'</p>	<p>(Subject to UK joining the Lugano Convention) the test for determining which country secures jurisdiction will change to the <i>country with closest connection</i> (This is in line with current law for non-EU/UK jurisdiction issues)</p> <p>However, there remains uncertainty about how EU jurisdictions will apply this test if an EU country issues 'first in time' and the UK issues 'second in time', but the UK has the closest</p>



			connection – as this is the UK test and not the test applied throughout the rest of the EU
	<p><b>Urgent action to consider</b></p> <p>If there is a possible EU/UK jurisdiction race, issue divorce proceedings in the favoured jurisdiction <u>before</u> 31 December 2020 (to include financial remedy proceedings pursuant to a divorce). This will also avoid any uncertainty arising from whether the UK joins the <i>Lugano Convention</i> – as hopefully they will also have been issued '<i>first in time</i>'.</p>		
	<b>Family law Issue</b>	<b>Now</b>	<b>After 31 December 2020</b>
3.	<p><b>The limited financial claims available when the current '<i>residual</i>' ground for divorce jurisdiction of sole domicile* (in UK) or sole nationality (in EU) is relied upon</b></p> <p>*Please note domicile is not the same as nationality (although it can be)</p> <p>Always seek specialist legal advice before relying on domicile in any divorce proceedings</p>	<p>If the parties only jurisdictional ground for divorce is the '<i>residual</i>' ground of sole domicile (in UK) or sole nationality (in EU) financial claims are restricted to <i>sharing</i> claims. This means no '<i>needs-based</i>' financial claims can be made e.g. for spousal maintenance or for more than a 50% share of the marital assets or a share of any other non-marital assets, even where one party has a greater financial need</p>	<p>The jurisdictional ground for divorce of sole domicile, sole nationality will be treated equally (under UK law) and the UK law will enable <u>all</u> financial claims (both needs and sharing)</p> <p>Whether the EU recognises this interpretation (when the rest of the EU retains the sharing only approach to what will remain a '<i>residual ground</i>' for them) is also uncertain</p> <p>Where possible seek to rely on another jurisdictional ground for divorce</p>
	<p><b>Urgent action to consider</b></p> <p>The wealthier party to a divorce might well benefit from issuing divorce and financial proceedings <u>before</u> 31 December 2020.</p> <p>The weaker financial party to a divorce might benefit from waiting (if they can) to issue divorce and financial proceedings until <u>after</u> 31 January 2020.</p>		
	<b>Family law Issue</b>	<b>Now</b>	<b>After 31 December 2020</b>
4.	<p><b>Obtaining a UK pension sharing order against a UK pension where the parties' only connection to the UK is the pension</b></p>	<p>No pension sharing order made abroad against a UK pension can be implemented without a local UK pension sharing order</p>	<p>To implement any pension sharing order made abroad against a UK pension the parties will need to show a stronger connection to the UK to be able to</p>



		There is currently a very useful EU law that enables the UK courts to enable a pension sharing order to be made in the UK where the couple's only connection to the UK is the UK pension fund	apply for the requisite UK pension sharing order
<b>Urgent action to Consider</b>  As the parties that would benefit from this existing EU law are almost certainly unlikely to have any other connection to England, they must apply <u>before</u> 31 December 2020, otherwise their opportunity to implement the foreign pension sharing order against a UK pension will be lost.			
	<b>Family law Issue</b>	<b>Now</b>	<b>After 31 December 2020</b>
5.	<b>Child arrangements orders, including relocation orders</b>	Recognised automatically in the EU	If issued before 31 December 2020 will continue to be recognised in EU
<b>Urgent action to consider</b>  Consider instigating Children Act proceedings here if child likely to travel between UK and EU countries			
	<b>Family law Issue</b>	<b>Now</b>	<b>After 31 December 2020</b>
6.	Child Abduction order	Automatically recognised in EU under EU laws (and Hague Convention 1996)	Will still be recognised in EU, but only pursuant to Hague Convention 1996 (which is a slightly more cumbersome procedure)
<b>Urgent action to consider</b>  Applications that can be made in the UK and involve another EU country should be started before 31 December 2020 as the method of enforcement of the orders in any relevant EU country will be slightly more straightforward.  However, as these are usually emergency proceedings, the timing for their commencement is unpredictable and so is less likely to be within your control			