

Practice Rights in a 'No Deal' Scenario

Issue	LSNI Briefing
<p>Practice Rights- NI/ROI</p> <p>Northern Ireland solicitors seeking to ensure continued rights to practice seamlessly in the Republic of Ireland.</p>	<p>Official view from Government is that nothing should impact the right and practical ability of the Law Society of Northern Ireland and the Law Society of Ireland as regulatory bodies to continue reciprocal recognition and admission of solicitors on a seamless basis in the event of a 'no deal' Brexit.</p> <p>The Society has strongly championed that this position must not be endangered either directly or indirectly or as an unintended consequence of the UK's withdrawal from the European Union.</p> <p>Those practising or intending to practice in the Republic of Ireland should apply for admission to the roll and a practising certificate in the Republic of Ireland.</p>
<p>Completing REL/Requalification in line with EU Lawyers' Directives</p> <p>NI solicitors in a host EU/EFTA state who have not fulfilled the requirements of the Lawyers' Establishment Directive by registering with the host bar as per <u>Article 3</u> will lose the right to practice in the EU/EFTA under the terms provided for in the Directives.</p>	<p>NI lawyers practising in an EU/EFTA state who have not yet registered with the competent authority should do so as soon as possible.</p> <p>The UK Government has laid the relevant secondary legislation to remove preferential frameworks for EU/EFTA lawyers as established under the Directives in readiness for 'no deal'.</p>

<p>Rights of Audience in EU Courts</p> <p>UK qualified lawyers will lose their rights of audience before the EU courts after withdrawal date, <u>unless</u> they hold an alternative EU/EFTA qualification.</p>	<p>In the first instance, members seeking rights of audience before the EU courts should ensure they are admitted to the roll and hold a valid practising certificate with the Law Society of Ireland.</p> <p>Whilst it is a matter for the EU to determine access to their institutions, the Society has been strong in our advocacy that reciprocal recognition and the long standing position of NI/ROI lawyers should be fully respected in that rights of audience should attach to this status.</p> <p><u>Alternatively, before 29 March 2019</u>, NI qualified lawyers who practise in another EU member state and can prove three years of “effective and regular pursuit of a professional activity” in the member state may wish to consider starting the re-qualification procedure under <u>Article 13</u> of the <u>MRPQ directive</u>, subject to the conditions set out by the national regulator.</p>
<p>Issue</p>	<p>LSNI Briefing</p>
<p>Loss of Legal Professional Privilege</p> <p>Strong concern that communications between UK qualified lawyers and their clients will lose the protection of legal professional privilege (LPP) before EU courts and institutions.</p>	<p>NI solicitors practising or intending to practise before the EU courts and institutions should ensure they are admitted to the roll and hold a practising certificate with the Law Society of Ireland.</p> <p>As above, the Society has strongly maintained the view with official parties that reciprocal recognition should allow LPP to attach.</p> <p>Alternatively, NI solicitors might consider involving their EU/EEA-qualified colleagues in ongoing cases to secure LPP where applicable.</p>

Issue	LSNI Briefing
<p data-bbox="188 240 533 272">Free Movement Rights</p> <p data-bbox="188 316 954 459">EU free movement rights may cease in a ‘no deal’ situation. NI and UK solicitors generally may need to ensure they have the appropriate visa and/or work permit in advance for EU/EFTA States.</p>	<p data-bbox="976 240 2040 347">It is open to NI solicitors who are eligible to acquire the nationality of an EU Member State to do so if they are seeking to ensure continued access to EU free movement rights.</p>
<p data-bbox="188 687 864 719">Practice Rights in EU/EFTA (Other than ROI)</p> <p data-bbox="188 767 954 970">NI solicitors will no longer be able to automatically provide services in EU Member States on a temporary basis using their home state qualification and UK lawyers would have to comply with the national law of the EU/EEA state</p>	<p data-bbox="976 687 2040 842">Any firms with existing operations in the EU/EFTA should review whether their existing structures are compliant with the relevant national company law and the professional rules for legal practice in the host country for third-country lawyers.</p> <p data-bbox="976 895 2040 1054">Where relevant, any branches of NI LLPs or other entities should review and consider whether they can continue operating in the relevant EU/EFTA state or restructure to become a national structure/branch of a firm headquartered in another EU/EFTA state.</p> <p data-bbox="976 1107 2040 1267">When reviewing, consideration should be given to whether the relevant national rules authorise local (EU/EFTA) lawyers to practice together with third-country lawyers, as well as the potential impact on equity, profit sharing, limitations of liability and taxation.</p>

Family Law Co-Operation in a 'No Deal' Scenario

Issue

Application of the Brussels Regulations/Maintenance Regulation etc.

The Brussels II Regulation is a single legal instrument which helps families resolve disputes on divorce and the custody of children **where the parties are in more than one EU Member State.**

Under the Brussels II framework, EU courts recognise judgments delivered in other EU states on matrimonial & parental responsibility.

This will cease to apply to the UK upon withdrawal from the EU in a 'no deal' scenario.

Additionally, the Maintenance Regulation which helps to ensure the payment of maintenance in cross-border situations will no longer apply.

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In some areas, the **Hague Conventions** will continue to apply between the UK and EU/EEA states.

On 28 December 2018, the UK signed and ratified **The Hague Convention 2007 on the International Recovery of Maintenance unilaterally.** The UK has also deposited its instrument of accession to **The Hague Convention 2005 on Choice of Court Agreements** on the same date. **As a result, in the event of 'no deal', the UK will become a contracting party to both Hague Conventions in its own right on 1 April 2019.**

Otherwise, national law will apply to family law issues in the UK and in EU/EEA member states given that all reciprocal elements of EU law will cease to exist, and will be repealed by the UK government.

Bilateral treaties and conventions pre-dating EU membership may exist between the UK and EU Member States. To find out whether this is the case, the Society recommends NI solicitors **consulting the national law** of the country and a **local lawyer** in that country for further clarification.

Issue	LSNI Briefing
<p data-bbox="188 244 640 276">The Status of Ongoing Cases</p> <p data-bbox="188 328 781 531">EU family law instruments based on the principle of mutual recognition and governing the enforceability of any case decided after 29 March 2019 will not have cross-border effect, namely:</p> <ul data-bbox="237 584 633 691" style="list-style-type: none"> <li data-bbox="237 584 633 616">▪ Maintenance Regulation <li data-bbox="237 619 633 651">▪ Brussels II Regulation <li data-bbox="237 654 633 691">▪ Lugano Convention <p data-bbox="188 738 781 898">There is a significant risk of parallel cases being taken in multiple jurisdictions, with all of the attendant disruption for clients and firms.</p>	<p data-bbox="804 244 1816 276">Many of the Hague Conventions on Private International Law <u>will</u> apply.</p> <p data-bbox="804 328 2103 403">However, the UK would revert to existing common law and statutory rules with the removal of the aforementioned family law instruments.</p> <p data-bbox="804 456 2103 531">The UK would have to be invited to become a member of the <u>Lugano Convention</u> and <u>EU and EFTA states will have to ratify its accession before its provisions can apply.</u></p>

Civil Justice Co-Operation in a 'No Deal' Scenario

Issue	LSNI Briefing
<p data-bbox="188 288 772 363">Loss of Reciprocity and Status of Bilateral Co-Operation</p> <p data-bbox="188 416 772 703">The relevant national rules will apply to this area of law in the UK and in EU/EEA Member States, given that all reciprocal elements of EU law will cease to have effect. In the UK, these provisions will be repealed by the UK government.</p> <p data-bbox="188 756 772 871">However, in some cases bilateral treaties and conventions pre-dating EU membership may exist between the UK</p>	<p data-bbox="801 288 2076 403">To discover whether existing bilateral treaties and conventions are in place, the national law of the state concerned should be consulted. A local lawyer in that country may also need to be consulted.</p>
<p data-bbox="188 887 568 919">Status of Ongoing Cases</p> <p data-bbox="188 971 772 1302">The status of ongoing cases at the point of withdrawal in a 'no deal' scenario is unclear. The rules governing the enforceability of any case decided after 29 March 2019 will cease to have effect and there is a risk that parallel cases may be taken in multiple jurisdictions.</p>	<p data-bbox="801 887 2076 962">The potential disruption brought about by this situation has been emphasised to key decision makers by the Society clearly and consistently.</p>

<p>This would leave parties requiring two legal teams, with qualified lawyers <u>no longer able</u> to represent their clients in each other's jurisdiction.</p> <p>The impact of this may be damaging to the client by pushing up the cost of litigation and squeezing small and medium-sized businesses.</p>	
<p>Issue</p>	<p>LSNI Briefing</p>
<p>Recognition and Enforcement of Judgments</p> <p>The Brussels I Regulation will <u>no longer apply</u> between the UK and EU27.</p> <p>In that scenario, the Society sees the UK reverting to on pre-existing common law rules for the recognition and enforcement of foreign judgments.</p>	<p>The UK also deposited its instrument of accession to the 2005 Hague Convention on Choice of Court Agreements on the 28 December 2018. This means that, in the event of no deal, the UK will become a contracting party in its own right on 1 April 2019.</p> <p>This would allow for recognition and enforcement of judgments where the parties have concluded an exclusive choice-of-court agreement.</p> <p>Otherwise, the national law of each EU/EEA state in question will determine whether a foreign UK judgment can be recognised and enforced in that jurisdiction.</p>
<p>Insolvency Matters/ Service and Evidence The <u>Insolvency Regulation</u> will <u>no longer</u> be applicable between the UK and EU-27 Member States. <u>Therefore, an</u> insolvency officeholder appointed in the UK will have difficulty obtaining recognition in the EU.</p>	<p>UK Insolvency Practitioners will require to make applications under an EU country's domestic law in order to press for UK orders to be recognised there.</p> <p>The Government set out that in certain circumstances, some EU countries may not recognise UK insolvency proceedings, for example if that would prevent creditors from taking action against the assets held in that country. The UK Government notes that insolvency practitioners may wish to take professional advice on the prospects of successfully obtaining recognition for a UK insolvency order in an EU country.</p>

Other EU regulations concerning the creation of special instruments in specific fields e.g. Motor Insurance Directive will no longer apply. EU rules protecting the weaker party, e.g. victims of motor accidents, will no longer apply in the UK. The Service Regulation and Evidence Regulation will no longer apply.

The UK Government has indicated that whilst EU insolvency proceedings and judgments will no longer be recognisable in the UK under the Insolvency Regulation, they may be so recognised under the UNCITRAL Model Law on Cross-Border Insolvency, which already forms part of the UK's domestic rules on recognising foreign insolvencies.

It may be possible to rely on the Hague Service Convention and the Hague Evidence Convention.

Data Protection Issues in a 'No Deal' Brexit

Issue	LSNI Briefing
<p>Data Protection Breaches</p> <p>The risk of breach in data operations, including transfers of personal data from the EU to the UK and onward transfers of that data from the UK to third countries.</p> <p>This risk is especially relevant to contracts which include clauses prohibiting the transfer of data outside of the EU.</p>	<p>NI solicitors should review the data flows and data transfer mechanisms in their firms to make sure there will be no breach in their data operations. In doing so, NI solicitors should:</p> <p>(a) Determine which safeguards are best suited to the needs of their firm:</p> <ul style="list-style-type: none"> • Standard Contractual Clauses (SCCs) • Binding Corporate Rules (BCRs) • Codes of Conduct • Certification Mechanisms <p>(b) AND if, at present, firms rely on SCCs in transferring personal data outside the EEA to another controller or processor, that they should consider:</p> <ul style="list-style-type: none"> • using a different safeguarding mechanism; or, • changing their firms' data flows in relation to EU personal data so that it is transferred from an EU data exporter directly to a non-EEA/non-UK data importer under an appropriate data transfer mechanism e.g. SCCs.
<p>Consent as a Basis for Processing Data</p> <p>Lack of clarity on whether UK businesses which are relying on consent as processors of EU personal data can</p>	<p>If a NI firm's processing relies on consent being obtained while the UK is still a member of the EU, NI solicitors should consider obtaining this consent again as a safeguard.</p> <p>NI solicitors should examine the language used in relation to consent in order to see if it <u>specifically</u> covers the transfer of personal data outside the EEA.</p>

continue to do so following a no-deal Brexit.	
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Privacy concerns	<p>NI solicitors should review their privacy policies so that clients understand the movements of their personal data in and outside of the EU.</p> <p>NI firms that have an office in <u>another</u> EU country or process EU data should consider other aspects of local privacy laws in that country, given that the GDPR allows for local variations on data breach notifications and appointment of a data protection officer.</p> <p>NI firms that have an office in <u>another</u> EU country and have nominated the Information Commissioner's Office (ICO) as their Lead Supervisory Authority (LSA) through the GDPR 'one stop shop' principle will need to consider nominating another EU regulator.</p> <p>NI firms that process personal data but <u>do not</u> have an office in <u>another</u> EU state might have to appoint an EU representative and update privacy notices to include their contact details.</p>

Criminal Justice Co-Operation in a 'No Deal' Scenario

Issue	LSNI Briefing
<p data-bbox="181 400 584 432">Co-Operation on Extradition</p> <p data-bbox="181 469 1010 568">In the 'no deal' situation, the UK may end up relying on the 1957 European Extradition Convention (as the European Arrest Warrant (EAW) would not apply).</p> <p data-bbox="181 604 1010 735">Whilst all current EU Member States are signatories and have ratified the 1957 Convention, a number of states have repealed the provisions put in place to implement the Convention, including the Republic of Ireland.</p> <p data-bbox="181 772 1010 871">As a result, any reversion to applying the 1957 Convention would likely require the ROI (and other Member States) to amend their domestic law to accommodate this.</p> <p data-bbox="181 908 1010 1007">In some states (including France and Germany), this would actually require constitutional change to allow a non-EU state to extradite of their citizens.</p> <p data-bbox="181 1043 1010 1107">This loss will generally make the process of extradition lengthier, more complex and costly.</p>	<p data-bbox="1021 400 2051 499">LSNI representatives have clearly and consistently emphasised the benefits of criminal justice co-operation and that provision to ensure continuing co-operation is in the interests of both parties.</p>
<p data-bbox="181 1115 797 1147">Co-Operation on Criminal Justice Generally</p> <p data-bbox="181 1184 1010 1283">The risk of the UK exiting Europol, Eurojust and to share information with member states through the Schengen Information System II.</p>	<p data-bbox="1021 1115 2051 1246">The Society has clearly and consistently maintained that it is vital the UK either remains party to these institutions or secures co-operation arrangements with them which continues the strong level of co-operation which exists today.</p>