

I have given some thought to the Brexit questionnaire, and there are a handful of points I'd like to make. However, given the emphasis on cross-border issues, where there is any doubt then I would defer to my colleagues in IPL!

But, for what it's worth, my three observations (which broadly map on to questions 1, 2, and 6) are:

1. Should EU family law provisions continue to apply post-Brexit?

The main EU provisions on family law concern cross-border issues, such as the mutual recognition and enforcement of judgments. Whether they should – or can – continue to apply presumably depends as much on whether there will be recognition for Scottish judgments in the EU, as recognition for EU27 judgments here? But we presumably only have control over recognition under Scots law of EU27 judgments? For which, see q2...

There are few (if any) substantive family law provisions which apply in domestic law, but I would support ongoing recognition of any substantive laws, together (of course) with Art 8 ECHR which will continue (for now...).

2. Should Scotland recognise family law judgments for the EU27?

I think on balance we should. Anything which helps families in Scotland is to be encouraged, and allowing judgments from the EU27 to be recognised and implemented here would provide greater certainty and potentially avoid the need to litigate a second time. However, any recognition should of course be subject to existing protections, to allow judgments to be set aside where appropriate.

6 - Any other points about Brexit?

Having clear and accurate guidance on cross-border family law litigation and rights post-Brexit will be critically important. Families affected by cross-border issues with EU27 states will need access to standard information concerning their rights and obligations re divorce, relocation, child contact, financial obligations etc. Information provision – and resources – will be critical in minimising the damage to families separated by Brexit, or where the divorce/ separation results in one partner moving to an EU27 state. The cost of taking legal advice may be prohibitive for some families, and uncertainty can be damaging, especially to the weaker party – they will be at risk of being taken advantage of. The Govt should take responsibility for ensuring that as much guidance as possible is available on all aspects of cross-border family disputes between the UK and EU27.