

<b>Title: The Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019:</b> Lugano 2007, Lugano 1988 EU/DK 2005, Brussels 1968, Brussels I, Brussels Ia) <b>IA No: MoJ026/2018</b> <b>RPC Reference No:</b> <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> 20/12/2018	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 28/01/2019			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> EU Exit			
	<b>Type of measure:</b> Secondary Legislation			
	<b>Contact for enquiries:</b> Andrew.Thompson@justice.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
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Cost of Preferred (or more likely) Option				
Total Net Present Value £n/a	Business Net Present Value £n/a	Net cost to business per year (EANDCB in £n/a	One-In, Three-Out? £n/a	Business Impact Target Status Out of Scope

**What is the problem under consideration? Why is government intervention necessary?**

The rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters across the EU, are contained in a series of EU legislative instruments and international treaties. These are:

- The Brussels Ia Regulation (and, in relation to matters arising before it came into effect, the Brussels I Regulation) establishes reciprocal rules to determine which EU Member State's courts have jurisdiction over cross-border disputes involving defendants domiciled in EU Member States and a simplified regime for the recognition and enforcement of judgments across the EU. Brussels Ia applies directly to all EU Member States other than Denmark (see below). The UK remains a Contracting State to the Brussels 1968 Convention which preceded Brussels I) and to its 1968 and 1971 Protocols (the Brussels Conventions) which, although superseded by Brussels I, remains in force, at least as regards Aruba and certain French overseas collectivities.
- The EU-Denmark Agreement, and associated EU Council decisions, provide that the Brussels Ia rules on jurisdiction and recognition and enforcement apply reciprocally as between Denmark and the rest of the EU Member States.
- The Lugano 2007 Convention, and associated EU Council decision, provide that the Brussels I rules (which preceded Brussels Ia) on jurisdiction and the recognition and enforcement apply between the EU, Denmark and those EFTA member states (Switzerland, Norway, Iceland) which have concluded the Lugano Convention ("The Lugano States").

These legislative instruments and treaties, and the domestic legislation giving them effect, will become retained law on exit-day under the European Union (Withdrawal) Act 2018. However, as retained, they will contain deficiencies that will render them partly or fully unworkable creating confusion as to how the rules apply in the UK. Government intervention is required to correct these deficiencies.

**What are the policy objectives and the intended effects?**

The policy objectives are to ensure that, post-exit, the common law and statutory rules on jurisdiction and the recognition and enforcement of judgments (that apply at present only to cross-border cases where the EU instruments don't currently apply) apply to cases involving EU Member States and Lugano States as well, and provide clarity that those rules are workable in the UK.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- **Option 0.1/Static acquis – the pre-EU exit position which includes full cooperation and reciprocity with EU Member States and Lugano States.**
- **Option 0.2/Do nothing** - make no amendments to the retained EU Law or associated domestic legislation in this area to account for the effects of the UK leaving the EU.
- **Option 1** - Revoke retained EU Law, extinguish the retained rights and amend associated domestic legislation, save for:
  - Retention and restatement of rules contained in Brussels 1A relating to jurisdiction in cases brought by and against UK domiciled employees and consumers, in the form of new provisions in the Civil Jurisdiction and Judgments Act 1982.
  - Retention and restatement of Brussels 1A rules on the domicile of corporations or associations for the retained and restated rules on jurisdiction in cases brought by and against UK domiciled employees and consumers, and section 16 of the Civil Jurisdiction and Judgments Act 1982 (allocation within the UK of jurisdiction in certain civil proceedings).
- **Option 2** - Unilaterally apply the rules of these conventions and agreements in their entirety.

The Government's preferred option is option 1 as this best meets the policy objectives.

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date:** n/a

Does implementation go beyond minimum EU requirements?	N/A			
Are any of these organisations in scope?	Micro	Small	Medium	Large
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded:		Non-traded:	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Lucy Frazer \_\_\_\_\_ Date: \_\_\_\_\_ 28/01/2019 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Revoke the retained EU Law, extinguish the retained rights and amend associated domestic legislation.

## FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition)	Total Cost (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

### Description and scale of key monetised costs by 'main affected groups'

None

### Other key non-monetised costs by 'main affected groups'

Baseline: Option 0.1/Static acquis:

- Ambiguity resulting from applying two different sets of jurisdictional rules in cross-border cases with a UK and an EU or Lugano State element could result in more disagreements around where a case should be heard and an increased risk of parallel proceedings which provides less certainty for litigants.
- Common law rules involve a less efficient mechanism for recognising and enforcing judgments than using existing EU rules deriving from the Brussels regime, which will cost those seeking to have their judgment recognised in the UK more money and time, and may restrict their ability to enforce in the UK at all.

Baseline: Option 0.2/Do nothing:

Negligible costs relative to the 'do nothing' option, because revoking non-functioning legislation from the statute book would provide no less provision to those seeking recognition and enforcement of civil and commercial matters.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

### Description and scale of key monetised benefits by 'main affected groups'

None

### Other key non-monetised benefits by 'main affected groups'

Baseline: Option 0.1/Static acquis:

- The UK will be able to take jurisdiction in cases for a wide variety of grounds, based on a well-established, sophisticated and familiar body of rules. These rules generally are not dependent on reciprocal application by other countries and so lack of reciprocity from EU and Lugano States will not affect their operation.
- There may also be a benefit for litigants in the UK courts of knowing that the same rules will apply to all cross-border disputes whether the dispute is connected to an EU or Lugano State, or a third country, which provides certainty and consistency.

Baseline: Option 0.2/Do nothing:

- Removing deficient retained EU law and associated domestic legislation from domestic law, while properly applying those we retain, will clarify the rules that apply to determine jurisdiction and recognition and enforcement of judgements for the legal profession and all litigants.
- There will also be benefits for UK domiciled employees and consumers as we will retain, in such a way as to allow them to operate effectively, jurisdictional provisions protecting them in cases that they bring or which are brought against them.

### Key assumptions/sensitivities/risks

None

### Discount rate (%)

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m
Costs: n/a	Benefits: n/a	Net: n/a	
			n/a

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Unilaterally apply the rules of the relevant conventions and agreements.

## FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

<b>Description and scale of key monetised costs by 'main affected groups'</b>
None
<b>Other key non-monetised costs by 'main affected groups'</b>
Baseline: Option 0.1/Static acquis:
<ul style="list-style-type: none"> <li>- Businesses and individuals litigating in the courts of EU countries will have an advantage over those litigating in the UK as UK litigants cannot guarantee the judgment they get from the UK courts is enforceable in the EU but litigants who get a judgment from the EU courts, will almost always be able to obtain enforcement of it in the UK.</li> <li>- Unilateral application of the Brussels 1a and Lugano 2007 rules on parallel proceedings could also result in increased legal costs because the EU and Lugano States will not treat the courts of the different UK jurisdictions as being part of that system of rules. This could result in litigants having to litigate two sets of proceedings over one dispute, and then address the problem of having two competing judgments on that same dispute.</li> </ul>
Baseline: Option 0.2/Do nothing:
As above

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	n/a	n/a	n/a
High	n/a	n/a		n/a
Best Estimate	n/a	n/a		n/a

<b>Description and scale of key monetised benefits by 'main affected groups'</b>
None
<b>Other key non-monetised benefits by 'main affected groups'</b>
Baseline: Option 0.1/Static acquis:
None
Baseline: Option 0.2/Do nothing:
<ul style="list-style-type: none"> <li>- Because a court has no discretion whether or not to exercise jurisdiction under the Brussels 1a and Lugano 2007 jurisdictional rules, applying those rules unilaterally would provide more predictability than the rules that would apply under Option 0.2. This will have the effect of reducing costs in many instances since there will be less scope for argument about whether the court has jurisdiction.</li> <li>- If the retained EU law and associated domestic legislation were amended to address exit-related deficiencies so that they would operate effectively on a unilateral basis, this would benefit those parties who are able to obtain judgments in an EU court, as those judgments would be recognised and enforced in the UK under the Brussels 1a</li> </ul>
<b>Key assumptions/sensitivities/risks</b>
None
<b>Discount rate (%)</b>

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m</b>
<b>Costs:</b> n/a	<b>Benefits:</b> n/a	<b>Net:</b> n/a	n/a

## Evidence Base (for summary sheets)

### A. Background

1. This statutory instrument addresses a number of EU legislative instruments and treaties (collectively, the Brussels Regime) that relate to:
  - the allocation of jurisdiction as between the courts of EU Member States and EFTA States in civil and commercial matters; and
  - the recognition and enforcement of judgments emanating from those courts in such matters.
2. The principal EU legislative instrument is the Brussels Ia Regulation. Brussels Ia governs the allocation of jurisdiction between EU Member State courts (except Denmark) in civil and commercial matters, as well as the recognition and enforcement of their judgments. Brussels IA has been amended by subsequent EU Regulations ((EU) 514/2014 and (EU) 2015/281) making minor amendments (the former to enable the Regulation to apply to common courts, specifically the Unified Patent Court and the Benelux Court of Justice, the latter to amend Annexes I and II). It recasts and supersedes Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels 1).
3. Brussels I has some residual application in relation to cases commenced before 10 January 2015 (after which date the Brussels IA Regulation applies) and for ongoing maintenance enforcement for decisions prior to the application of the Maintenance Regulation (from June 2011). Relations in this area between Member States and Denmark are governed by the EU/Denmark agreement, which essentially applies the rules of the Brussels 1A Regulation to Denmark by virtue of an international agreement. Denmark does not participate in the European Union Area of Freedom, Security and Justice, in accordance with Protocol 22 on the Position of Denmark in the Treaty on the Functioning of the European Union.
4. The other key international agreement in this area is the 2007 Lugano Convention, formally known as the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which makes very similar provision to the rules of Brussels 1, and applies between Norway, Iceland, Switzerland and the Member States of the EU, as well as between the first three States and Denmark.
5. In addition to the two key treaties mentioned at paragraphs 2-3 above, there are certain older treaties which retain some relevance as follows:
  - The Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (including the Protocols annexed to that Convention) opened for signature at Lugano on 16 September 1988 and signed by the United Kingdom on 18 September 1989 (“the 1988 Lugano Convention”). This Convention (which mirrored the Brussels Convention in the same way as the 2007 Lugano Convention mirrors Brussels I) was superseded by the 2007 Lugano Convention; however, it may still be relevant for transitional cases, including recognition and enforcement of maintenance decisions given before the application of the 2007 Lugano Convention.
  - The Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters, signed at Brussels on 27 September 1968 (“the Brussels Convention”). The Brussels Convention was superseded by Brussels I, which was an updated and improved version of the rules of the Convention. However, the UK remains a Contracting State to the Brussels Convention (and to its 1968 and 1971 Protocols) which remains in force in relation to certain Dutch and French overseas territories. It may also still be relevant in relation to enforcement of decisions predating the entry into force of Brussels 1 (March 2002). This treaty was an intergovernmental treaty between the then Member States, and was updated in certain respects by the accession treaties as new Member States joined. The Court of Justice has jurisdiction to interpret the treaty for the Member States by virtue of the Protocol.

6. The principal EU legislative instruments and treaties are supplemented by a number of tertiary EU instruments (in the main, EU Council Decisions relating to the signature and approval on behalf of the Union of the 2007 Lugano Convention and the EU/Denmark agreement).
7. The two Brussels Regulations and the rights, powers, liabilities, obligations, restrictions, remedies and procedures arising under the Brussels Conventions, the EU-Denmark Agreement and the Lugano Conventions (and the domestic primary and secondary legislation that gives effect to these regulations and rights, obligations etc.) will become part of, or continue to have effect in, domestic law on exit-day pursuant to Clauses 2, 3 and 4 of the Withdrawal Act.
8. As retained, these laws will contain numerous exit-related deficiencies that will render them partly or fully unworkable post exit (particularly as they rely upon reciprocity that will not exist post exit). As a result, the law applicable to jurisdiction and the recognition and enforcement of judgements in civil and commercial matters involving parties from the UK, the EU Member States and the three EFTA States will become largely unworkable, creating uncertainty and confusion as to whether, and to what extent, the Brussels Ia rules and the Brussels Conventions (in the case of EU Member States) and the 2007 Lugano Convention rules (in the case of the three EFTA States) remain workable and applicable in the UK. This will create uncertainty and undermine confidence in cross-border trade between the UK, the EU and the three EFTA States.

## **B. Policy Rationale and Objectives**

9. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to the more disadvantaged groups in society).
10. The rationale for intervention here is efficiency: to reduce legal uncertainty about allocation of jurisdiction in civil and commercial matters as predictability regarding which country's court will hear a dispute contributes to confidence in the UK justice systems. This will support wider economic interaction between the UK and EU and help to sustain the reputation of all three of the legal jurisdictions in the UK.
11. The associated policy objectives are to ensure that, post-exit, the common law and statutory rules on jurisdiction and the recognition and enforcement of judgments that apply to cross-border cases where the EU rules do not currently apply will in future apply to cases involving EU Member States and Lugano States as well. This will create uniformity of treatment and will clarify the rules that govern jurisdiction and the recognition and the enforcement of judgments in matters involving parties from the UK, the Lugano States and the EU Member States and ensure that those rules are workable in the different parts of the UK.
12. This will maintain an environment that facilitates cross-border economic activity, that supports British businesses in their international interactions and that sustains Britain's strong international reputation as a centre of legal excellence.

## **C. Affected Stakeholder Groups, Organisations and Sectors**

13. The groups most likely to be affected by the options in this Impact Assessment (IA) are as follows:
  - UK businesses
  - Individuals litigating in the civil courts in the UK (including consumers and employees)
  - The providers of legal services
  - UK courts

## D. Description of Options Considered

14. In order to meet the policy objectives, the following options are assessed in this IA:
- **Option 0.1/Baseline:** static acquis – the pre-EU exit position which includes full cooperation and reciprocity with EU Member States and Lugano States, which will not be possible in a no deal scenario.
  - **Option 0.2/Baseline:** do nothing - make no amendments to the retained EU Law or associated domestic legislation in this area to account for the effects of the UK leaving the EU.
  - **Option 1:** revoke the retained EU Law and extinguish the retained rights and obligations derived from the Lugano and Brussels Conventions and the EU-Denmark Agreement, and amend associated domestic legislation to remove references to the retained EU law from the statute book, save for:
    - Retention and restatement of rules contained in Brussels 1A relating to jurisdiction in cases brought by and against UK domiciled employees and consumers, in the form of new provisions in the Civil Jurisdiction and Judgments Act 1982.
    - Retention and restatement of rules on the domicile of corporations or associations for the purposes of the retained and restated rules on jurisdiction in cases brought by and against UK domiciled employees and consumers, and of section 16 of the Civil Jurisdiction and Judgments Act 1982 (allocation within the UK of jurisdiction in certain civil proceedings).
  - **Option 2:** unilaterally apply the EU rules as if the UK were still an EU Member State, notwithstanding the fact that EU Member States will no longer treat us in such a way.
15. The Government's preferred option is option 1 as this best meets the policy objectives.

### Option 0.1/Baseline: Static acquis

16. This option is the status quo – this reflects how, pre-EU exit, the Brussels Ia Regulation, and related instruments, function in the UK, which includes full cooperation and reciprocity with EU Member States and Lugano States. While this IA compares the impact of option 1 and option 2 against this baseline for illustrative purposes it is not possible for the UK Government to retain the status quo in a no deal scenario.

### Option 0.1/Baseline: Do nothing

17. Under this option, post EU exit, the Brussels Ia Regulation, Brussels I Regulation, Brussels 1968 Convention, Lugano 2007 Convention and the EU-Denmark Agreement will be retained as domestic law, but the exit-related deficiencies will remain. These deficiencies derive from the fact that the operation of the rules is predicated entirely on specific connections between a dispute and a "member state", notably domicile of the defendant in a member state. They also apply for the most part only *as between* member states (for example in recognition and enforcement). As the UK will no longer be a Member State then the "do nothing" option making no changes at all to the retained law would render the law inoperable. In addition, the necessary reciprocity for the rules to operate effectively will be lost. This will, to some extent, fragment the operation of the common law and domestic statutory rules, but it is not known to what extent.

### **Option 1: Revoke the retained EU Law, extinguish the retained rights and amend associated domestic legislation, with certain exceptions**

18. This option would revoke retained EU Law and extinguish the retained rights etc., derived from the Lugano and Brussels Conventions and the EU-Denmark Agreement and amend associated domestic legislation to remove references to the retained EU law and the Lugano and Brussels Conventions and EU-Denmark Agreement from the statute book, save for:
  - Retention and restatement of rules contained in Brussels 1A relating to jurisdiction in cases brought by and against UK domiciled employees and consumers, in the form of new provisions in the Civil Jurisdiction and Judgments Act 1982.
  - Retention and restatement of rules on the domicile of corporations or associations for the purposes of the retained and restated rules on jurisdiction in cases brought by and against UK domiciled employees and consumers, and of section 16 of the Civil Jurisdiction and Judgments Act 1982 (allocation within the UK of jurisdiction in certain civil proceedings).
19. Post exit, jurisdiction and the recognition and enforcement of judgments in cross-border civil and commercial matters involving parties domiciled in EU Member States and Lugano States will be determined under the common law and domestic statutory rules, including the Brussels rules retained and restated in statute as described above, as well as the provisions of the Hague 2005 Convention on exclusive Choice of Court Agreements where that Convention applies.

### **Option 2: Unilaterally apply rules of the relevant conventions and agreements**

20. This option would see the UK apply the rules of these conventions and agreements unilaterally post-EU exit, using the correcting power in the Withdrawal Bill to correct exit-related deficiencies (primarily relating to the lost reciprocity by the EU or Lugano states currently applying the EU rules reciprocally with the UK, but also to require application of the rules by the UK as if it remained an EU member state).
21. This would amend the EU rules so the UK courts follow EU rules on jurisdiction as if the UK was an EU Member State, including the lis pendens rules which control competing proceedings (which means that the court of the jurisdiction where proceedings are first started usually hears the case) and that UK courts would automatically enforce judgments from EU courts.

## **E. Cost and Benefit Analysis**

22. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
23. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the United Kingdom with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.

24. However, in this case, there is no measure of legal certainty or way to quantify the impact of legal certainty on economic interaction so all costs and benefits are non-monetisable in nature.
25. This cost benefit analysis section will first compare the two options against the Option 0.1/Static acquis baseline, before comparing the two options against Option 0.2/Do nothing baseline.

### **Cost and benefit analysis, of Options 1 and 2 against Option 0.1/Static acquis:**

#### **Option 1: repeal the relevant conventions and agreements**

##### **Costs of Option 1**

*UK businesses, individuals litigating in the civil courts in the UK, the providers of legal services and UK courts*

26. Applying UK common law and statutory rules on jurisdiction in cross-border cases with an EU or Lugano State element will mean that the courts in the jurisdictions involved will not be applying a uniform set of rules as they do currently and, therefore, there could be a greater scope for disagreements around where a case should be heard and an increased risk of parallel proceedings, which provides less certainty for litigants engaged in such cross-border disputes in UK courts.
27. Common law rules involve different rules, and a less efficient mechanism for recognising and enforcing judgments than using existing EU rules deriving from the Brussels regime, which will cost those seeking to have their judgment recognised in the UK more money and time, and may restrict their ability to enforce in the UK at all.

##### **Benefits of Option 1**

*UK businesses, individuals litigating in the civil courts in the UK, the providers of legal services and UK courts*

28. The UK can take jurisdiction in cases for a wide variety of grounds, based on a well-established, sophisticated and familiar body of rules. These rules generally are not dependent on reciprocal application by other countries and so lack of reciprocity from EU and Lugano States will not affect their operation. UK lawyers can also use mechanisms such as anti-suit injunctions to stop companies seeking to run parallel proceedings in EU countries. This may address the risk of parallel proceedings in EU Member States.
29. There may also be a benefit for litigants in the UK courts of knowing that the same rules will apply to all cross-border disputes whether the dispute is connected to an EU or Lugano State, or a third country. This provides certainty, but also consistency, that could assist litigants when engaging in cross border civil and commercial matters.

#### **Option 2: Unilaterally apply rules of the relevant conventions and agreements**

##### **Costs of Option 2**

*UK businesses, individuals litigating in the civil courts in the UK, the providers of legal services and UK courts*

30. Companies and individuals litigating in the courts of EU Member States will have an advantage over those litigating in the UK, as the enforceability of judgments from UK courts in EU Member States will not be certain, but UK courts will be required to recognise and enforce judgments from courts in EU Member States where those are within scope of the EU or Lugano 2007 rules.



31. Also, while UK courts would apply the Brussels jurisdiction rules in matters involving EU domiciled defendants, including staying proceedings under the lis pendens rule in favour of proceedings in EU courts where the EU court was seised first (ie. where proceedings were first started there), EU courts would not apply those rules to matters involving UK domiciled defendants.
32. If the regulations were adjusted to operate effectively on a unilateral basis, this would be of no benefit to those parties wanting to obtain judgements, regarding cross-border matters, from UK courts if those judgments need to be enforced in EU Member States or Lugano States. This is because judgements from UK courts would not be recognised and enforced in EU Member States under the EU or Lugano rules. Nor would EU Member States apply the Brussels jurisdiction rules (including the lis pendens mandatory stay rule) in matters involving UK domiciled parties. The UK legal sector are likely to lose out as the practical effect could be that more cases will be heard in EU courts where recognition or enforcement of the outcome somewhere in the EU is a priority for the litigant.

## **Benefits of Option 2**

33. None

## **Cost and benefit analysis of Options 1 and 2 against Option 0.2/Do nothing:**

### **Option 1: Revoke the retained EU Law, extinguish the retained rights and amend associated domestic legislation, with certain exceptions**

#### **Costs of Option 1**

*UK businesses, individuals litigating in the civil courts in the UK, the providers of legal services and UK courts*

34. There would only be negligible costs relative to the 'do nothing' option, because revoking non-functioning legislation from the statute book would provide no less provision to those seeking recognition and enforcement of civil and commercial matters, than leaving it in place as under the 'do nothing' option.

#### **Benefits of Option 1**

*UK businesses, individuals litigating in the civil courts in the UK, the providers of legal services and UK courts*

35. Removing deficient retained EU law and associated domestic legislation from domestic law, while properly applying those we retain, will clarify the rules that apply to determine jurisdiction and recognition and enforcement of judgements, making the relationship with existing private international law rules clear for the legal profession and litigants as well as people engaging in cross border legal relationships such as trade. This will reduce satellite litigation aimed at establishing which rules apply and make British legislation more transparent, therefore protecting its reputation. This will also ensure the same rules apply in the United Kingdom to cross-border matters involving EU and non-EU countries.
36. There will also be benefits for UK domiciled employees and consumers as we will retain, in such a way as to allow them to operate effectively, jurisdictional provisions protecting them in cases that they bring or are brought against them. This means they will be able to litigate in a jurisdiction that is familiar to them without the additional cost or complexity of litigating elsewhere and improve their access to the law.

37. There will also be a more general benefit for individuals litigating against businesses and for many such businesses themselves as they will be able to rely on the retained and restated jurisdictional rules that will exist under this option which provide for a broader set of connections to the UK which a court can consider when establishing the domicile of a company or association.

## **Option 2: Unilaterally apply rules of the relevant conventions and agreements**

### **Costs of Option 2**

*UK businesses, individuals litigating in the civil courts in the UK, the providers of legal services and UK courts*

38. Businesses and individuals litigating in the courts of EU countries will have an advantage over those litigating in the UK as UK litigants cannot guarantee the judgment they get from the UK courts is enforceable in the EU but litigants who get a judgment from the EU courts, will almost always be able to obtain enforcement of it in the UK.
39. Unilateral application of the Brussels 1a and Lugano 2007 rules on parallel proceedings could also result in increased legal costs because the EU and Lugano States will not treat the courts of the different UK jurisdictions as being part of that system of rules. Depending on how the operation of the jurisdictional rules of the EU and Lugano 2007 rules under option 0.2 was interpreted, this could result in situations in which both a UK court, and an EU or Lugano State's court, take jurisdiction to hear the same dispute, and neither will be obliged to decline jurisdiction. This could result in litigants having to litigate two sets of proceedings over one dispute, and then address the problem of having two competing judgments on that same dispute.
40. This is likely to have a particularly disadvantageous impact on UK based individuals and small or medium sized businesses who will not as easily be able litigate in an EU Member State, or who will have to go through time consuming recognition and enforcement procedures in a Member State to have their judgment recognised. Based on available data it is estimated that 8% of the UKs SMEs export to EU Member States (BIS,2016<sup>1</sup>) and the combined annual turnover of all UK SMEs is £1.9 trillion, 51% of all private sector turnover in the UK (BEIS,2017<sup>2</sup>).
41. There is also, under this option, a cost for those who have litigated in the courts of third countries who will be subject to less favourable rules in terms of recognition and enforcement than those litigating in the courts of an EU Member State without a policy justification for that difference.

### **Benefits of Option 2**

*UK businesses, individuals litigating in the civil courts in the UK, the providers of legal services and UK courts*

42. Because a court has no discretion whether or not to exercise jurisdiction under the Brussels 1a and Lugano 2007 jurisdictional rules, applying those rules unilaterally would provide more predictability than the rules that would apply under Option 0.2, where it is much less clear how the rules of jurisdiction would apply to cases involving those domiciled in an EU or Lugano state. This will have the effect of reducing costs in many instances since there will be less scope for argument about whether the court has jurisdiction.
43. If the retained EU law and associated domestic legislation were amended to address exit-related deficiencies so that they would operate effectively on a unilateral basis, this would benefit those parties who are able to obtain judgments in an EU court, as those judgments would be recognised and enforced in the UK under the Brussels 1a rules.

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<sup>1</sup> [BIS UK SMES Estimates 2016](#)

<sup>2</sup> [BEIS, Statistical release, Business population estimates 2017](#)

## **F. Wider Impacts**

44. This instrument does not amend, repeal or revoke any part of the Equality Acts 2006 or 2010 or subordinate legislation made under those Acts.
45. Due regard has been taken on the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. Our assessment concluded that the impacts of this policy will not give rise to any unlawful discrimination by reference to the protected characteristics set out under Equalities Act 2010 (age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity). The rules on jurisdiction and recognition and enforcement will apply equally to all parties, irrespective of their characteristics.

## **G. Enforcement and Implementation**

46. Following the UK's exit from the EU, the amendments made to retained EU law and to the relevant domestic legislation will be applied directly by the courts.

## **H. Monitoring and Evaluation**

47. As this instrument is made under the EU (Withdrawal) Act 2018, no review is required.

## **I. Business Impact Target**

48. This measure is out of scope of the Business Impact Target.