

Annex D: EU Regulations affecting family law

1. This consultation is not about European Union (EU) provisions on family law. However, consultees may find it helpful to have a brief note on key EU provisions which affect family law in Scotland. The Scottish Government very much welcomes EU involvement in family law as this helps families where there are disputes which cross EU borders. We will argue for continued and close civil judicial co-operation with our EU partners.

Brussels IIA

2. Regulation 2201/2003¹²⁶, also known as Brussels Ila, has applied since 1 March 2005.
3. It establishes rules on jurisdiction in matrimonial proceedings (mainly divorce) and provides for mutual recognition and enforcement of judgements from such proceedings. It also covers jurisdiction and recognition and enforcement of orders relating to parental responsibility (including residence and contact) and provides rules on the return of children abducted to, or wrongfully retained in other Member States. These rules supplement the 1980 Hague Child Abduction Convention¹²⁷ which provides a worldwide mechanism for the return of children abducted to, or wrongfully retained in participating countries.
4. Our understanding is that Brussels Ila does not extend to same sex relationships. However, provision has been made in domestic Scottish legislation to replicate, as far as Scotland can, the effect of Brussels Ila for same sex relationships¹²⁸.
5. In April 2014, the European Commission published a report on the operation of Brussels Ila in practice and considered necessary amendments¹²⁹.
6. On the back of the 2014 report the European Commission undertook further policy evaluation of the existing rules and their impact on EU citizens. They also ran a public consultation.
7. As a result of the further policy evaluation and consultation in 2016, the European Commission identified six areas for change in the area of parental responsibility¹³⁰:
 - (1) The return procedure for abducted children following a return order;
 - (2) Mandatory consent for all cross-border care placements;
 - (3) Abolition of *exequatur* and the automatic recognition of judgments;

¹²⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:HTML>

¹²⁷ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

¹²⁸ <http://www.legislation.gov.uk/ssi/2014/362/contents/made> and <http://www.legislation.gov.uk/ssi/2005/629/contents/made>

¹²⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0225&from=EN>

¹³⁰ <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-411-EN-F1-1.PDF>

- (4) A number of changes relating to hearing the child;
- (5) Improvements to the enforcement procedure; and
- (6) Better cooperation between central authorities.

8. Negotiations on changes to Brussels IIa are continuing.

The Maintenance Regulation

9. Regulation 4/2009¹³¹, also known as the Maintenance Regulation, deals with jurisdiction and enforcement of cases relating to maintenance and child maintenance. It is designed to enable 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.

Regulation on mutual recognition of protection measures in civil matters

10. Regulation 606/2013¹³² on mutual recognition of protection measures in civil matters came into force on 11 January 2015. It relates to civil protection measures (such as interdicts to protect against domestic abuse).

11. This Regulation allows a person who has a civil law protection order to have this recognised in other Member States for up to 12 months by presenting a certificate.

Regulation on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union

12. Regulation EU 2016/1191 will apply as from 16 February 2019¹³³. This regulation aims to facilitate the authentication of certain public documents and reduce the costs for their translation.

13. The regulation will cover public documents whose primary purpose is to establish one of the following facts: birth, death, name, marriage, divorce, legal separation or marriage annulment, registered partnership, dissolution of registered partnership, legal separation or annulment of a registered partnership, parenthood, adoption, domicile and/or residency or nationality.

¹³¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:007:0001:0079:EN:PDF>

¹³² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0606>

¹³³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1191>