Brexit planning:
Civil and commercial disputes before the English courts

UK/EU: Applicable law, jurisdiction and recognition of judgments in the UK – the Withdrawal Agreement, transition period, and beyond

The UK’s transition period under the UK/EU Withdrawal Agreement (“WA”) is now due to end at 11pm (UK time) on 31 December 2020, and, despite limited mitigants in the WA, the possibility of a Brexit outcome in this field akin to a “no-deal” scenario has not disappeared. This briefing considers what the UK’s transition out of the EU will mean for the above issues, and the consequent implications for the use of English governing law and jurisdiction clauses. The position is stated as of mid-July 2020.

Introduction

As is well known, Brexit carries the potential to impact civil and commercial cases heard by the UK courts which have an international element as many key instruments in the field of judicial co-operation in civil and commercial matters are (from the perspective of EU Member States) EU law instruments.¹

For example, in both contractual and non-contractual matters, the principal statutes in force which govern applicable law (including the efficacy of the parties’ choice) are EU Regulations; respectively, EU Regulation 593/2008 (“Rome I”) and EU Regulation 864/2007 (“Rome II”).

Similarly, the principal instruments governing jurisdiction and the recognition and enforcement of judgments before EU Member State courts are also instruments of EU law. They (and the parties to them) are EU Regulation 1215/2012 (the “Brussels I Recast” - EU Member States) and the Lugano Convention 2007 (“Lugano” - the EU Member States and Switzerland, Norway and Iceland²). These instruments set out a comprehensive set of jurisdictional rules (including rules giving effect to jurisdiction clauses in favour of states party to said instruments), the corollary of which are their provisions on the recognition and enforcement of judgments as between the states party to them.

¹ Commercial arbitration seated in England would largely be unaffected as, generally speaking, it is a matter which EU law does not regulate.
² The last three being the “Lugano States” for the purposes of this note.
There is also the Hague Choice of Court Convention ("Hague") which is currently in force between the EU Member States, Mexico, Singapore and Montenegro (in this note, the states party to Hague are referred to as "Hague Contracting States"); whilst "non-EU Hague States" means those Hague Contracting States which are not EU Member States i.e. – at the time of writing – Mexico, Singapore and Montenegro). This is somewhat different as it is an instrument with much more limited scope which largely turns on the use of a fully exclusive choice of court agreement in favour of the courts of one Hague Contracting State (an "ECCA"), and makes provision for the recognition and enforcement of judgments derived from an ECCA amongst Hague Contracting States.

Until the end of the transition period (the "Transition Period") under the WA which, now that the deadline for its extension under Article 132 WA has expired, is due to end at 11pm (UK time) on 31 December 2020, this regime will, in respect of the UK, largely remain in place as, during the Transition Period, the UK remains obliged to apply EU Law and the EU27 will treat the UK as an EU Member State.

But after that, and even in some cases before, it cannot be assumed that things will remain exactly as before. Contingency planning may therefore wish to take account of what might, in respect of the UK, happen to the above instruments, whether that would be acceptable and, if not, what to do instead.

Below, we examine these issues and consider the consequences for civil and commercial proceedings in the UK generally. We also consider the implications for English governing law clauses, and English jurisdiction clauses, in contracts between commercial parties (in those respects we assume that the parties are seeking to conclude a cross-border commercial contract in a context within which they are generally free to make such choices. By contrast, if, for example, any relevant EU law, or retained EU law, would mandate a particular choice or outcome in those areas - either now or once the Transition Period is over - then more consideration of those specific rules may be needed).

We also assume that the UK and EU27 do not agree any civil justice co-operation measures as part of any future relationship extending beyond the Transition Period. Were they to do so then a situation close to the status quo might generally prevail even after the Transition Period but, as this depends on agreement on all sides, there can be no guarantee of this.

Finally, the law in this area is technical and involves amendments to a suite of instruments. Whilst of relevance to both transactional, and disputes, practitioners, the level of familiarity with the current law of the respective groups will inevitably differ. Busy transactional lawyers who wish to skip straight to conclusions about governing law, and jurisdiction clauses can go straight to the responsive questions below.

Applicable law in contractual and non-contractual obligations

Rome I and Rome II provide standardised rules in the EU for determining applicable law in cross-border civil and commercial matters.

The English courts will continue to apply those rules for the duration of the Transition Period and, in addition, there are separation provisions in the WA by which, in respect of contracts entered into (and tortious events occurring) before the end of the Transition Period, they will continue to be bound to apply those instruments after the end of the Transition Period (WA Article 66). Beyond the Transition Period and those separation provisions the UK Government has confirmed that the content of Rome I and Rome II will be retained in domestic law (which can work as these instruments do not fundamentally depend on reciprocal treatment from other states). Accordingly, a UK Statutory Instrument ("SI") exists (the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc) (EU Exit) Regulations 2019) which would enter into force at the end of the Transition Period after the WA.

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3 Hague is a very technical instrument in several ways (including as to what comprises an ECCA). To the extent you may be interested in assessing whether it applies, please do consult with a practitioner familiar with its terms. Hague does not apply to ECCAs concluded before the date of its entry into force in the state whose courts have been designated in the relevant ECCA. The date on which Hague entered into force for all EU Member States (including, at that time, the UK, but excluding Denmark, which ratified it separately) was 1 October 2015.
Period and (subject to a few domesticate amendments) would preserve the effect of those instruments in the UK.4

(Generally speaking, under the UK’s EU Withdrawal Act 2018, the end of the Transition Period will – see s.39(1) of the EU (Withdrawal Agreement) Act 2020 - be called “IP completion day”. In respect of any UK SIs made under the 2018 Act before “exit day” (31 January 2020 i.e. when the UK technically left the EU) to deal with “Retained EU Law”, where these were expressed to come into force by reference to “exit day”, a general legislative “gloss” has been applied so that their commencement is instead referable to IP completion day – see Part 1, Schedule 5, EU (Withdrawal Agreement) Act 2020)

**What are the consequences of the UK’s transition out of the EU for the use of governing law clauses in favour of English law?**

There are two aspects to this. The first is independent from considerations of Rome I and Rome II and concerns whether, generally speaking, Brexit will have any impact on substantive English contract law. As we have previously considered,5 the answer to this will generally be “no”. The attractions of English contract law are largely independent of any Brexit-related issues.

The second is whether the basic efficacy of a governing law clause before the English courts would be altered. The short answer to this, in the light of the above, is also “no”, as the retention of Rome I and Rome II both during and after the Transition Period (in the latter case as, in cases outside Article 66 WA, Retained EU Law) means that the parties’ choice will continue to be respected under the same regime as now.6

It is also worth noting that, from the perspective of an English governing law clause before the EU27 courts, Brexit would generally not be relevant as to the effect those courts would give to the parties’ choice of English law. Rome I and Rome II would still apply in those states7 and the parties’ choice would be given effect under the same regime as before because the fact that the applicable law may be that of a non-EU Member State is not relevant to the applicability of those statutes.

**Jurisdiction and the recognition and enforcement of judgments**

During the Transition Period, the UK will continue to apply the Brussels I Recast, Lugano and Hague. The UK will also, under certain separation provisions, afterwards continue to apply the Brussels I Recast (and, apparently, Lugano) to proceedings commenced before the end of the Transition Period.

Beyond the above, the “default” situation would be that, in the UK, the Brussels I Recast and Lugano would be revoked on IP Completion Day (see the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (the “Jurisdiction SI”))8 and these matters would therefore generally return to common law rules. This is because the Brussels I Recast and Lugano depend on reciprocity and, although – at the time of writing –

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4 As well as the Rome Convention. This was the precursor to the Rome I Regulation and applies, insofar as the UK courts are concerned, to contracts concluded from 1 April 1991 but before 17 December 2009 (the date from which Rome I applies). In order to ensure continuity in respect of contracts to which the Rome Convention applies, the Applicable Law SI would make amendments to the Contracts (Applicable Law) Act 1990 which, essentially, retain the Rome Convention for such contracts and domesticate certain aspects of its interpretation.

5 See our briefing note “The impact of Brexit on the substance of English law”.

6 One related point to bear in mind in the Brexit context is, however, that if contracts under English law and jurisdiction are being factually localised into one jurisdiction (including the contracting parties), then certain articles permitting the application of mandatory rules of that state have greater potential for activation e.g. Article 3(3) Rome I. Parties restructuring transactions and/or their business as part of Brexit planning may need to have regard to this.

7 Denmark, it should be noted, has opted out of both, but applies the Rome Convention. The same observations, however, would apply to the application of that instrument in Denmark.

8 Jurisdiction SI Parts 4 & 5.
negotiations continue regarding whether the UK might be permitted to re-accede to Lugano, there can be no guarantee that application of the present status quo might be agreed as part of any future EU/UK relationship. Further, although the UK can, and intends to, independently accede to Hague in its own right, this is a far more limited regime.

We consider the implications of this in more detail below, as well as the key obligations of the EU27 towards the UK under the WA, and beyond, in related areas.

**Jurisdiction before the English courts**

As stated above, during the Transition Period, the current rules under the Brussels I Recast, Lugano and Hague will continue to apply before the English courts.

Thereafter, the default position would be that the common law rules would apply. Jurisdiction under the common law turns upon serving the claim form on the defendant. This will therefore depend on the ability to either serve the defendant in the jurisdiction or, where it is overseas, obtain permission to serve the claim form out of the jurisdiction. The grounds for permission to serve out are, generally speaking, somewhat different from the jurisdictional grounds under the Brussels I Recast/Lugano. Under the common law, the English courts also generally have a greater degree of discretion to decline jurisdiction (on the basis of an assessment of what the most natural forum for the dispute is – also known as a forum non conveniens test).

That basic post-Transition Period position will, however, be subject to a number of modifications. Most relevant for present purposes being:

First, in proceedings instituted before the end of the Transition Period, the Brussels I Recast will continue to be applied to determine jurisdiction insofar as it applied to those proceedings (Article 67(1)(a) WA) (and, apparently, the same will be true of the Lugano Convention).

Second, where an ECCA in favour of the English courts falls within the scope of Hague, its positive jurisdictional effect before the English courts will be governed by that instrument, not the common law.

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9 The UK’s current policy is to seek re-accession to Lugano at the end of the Transition Period (see here at paragraph 64) and, in April 2020, it made a formal application. Agreement from the other parties to Lugano is, however, required and can in no way be taken for granted (although the Lugano States, in January 2020, issued an expression of support, the UK’s accession would also require the consent of the EU Member States). Therefore, as set out earlier, this paper proceeds on the assumption that no such agreement is reached.

10 Under CPR 6.37.

11 See CPR PD6B paragraph 3.1.

12 Beyond the provisions mentioned, the Jurisdiction SI would also retain, in the Civil Jurisdiction and Judgments Act 1982 ("CJJA"), a modified version of the preceding EU rules for consumer contracts (where the consumer is domiciled in the UK), and employment contracts (where the employee or employer is domiciled in the UK, or the work is habitually carried out in the UK). Discussion of these are outside of the scope of this note, although those interested in these areas may wish to note that SIs correcting the transposition of the employment rules exist (see SI 2019/1338 and the draft Civil Jurisdiction and Judgments (Civil and Amendment) (EU Exit) Regulations 2020). It is also noteworthy that the Jurisdiction SI does not propose to modify the general intra-UK rules on jurisdiction in Schedule 4 of the CJJA.

13 An intention evidenced by Jurisdiction SI, regulations 92 & 93, although whether this is done by that SI or a separate agreement remains to be seen; Iceland and Norway having evidenced some willingness to conclude an agreement to that effect.

14 Which would, for example, mean that permission to serve out of the jurisdiction will not be needed. Also, under Hague, no application of forum non conveniens is possible (although, under the common law, where the parties have chosen the English courts this is only exercised in exceptional cases in any event). The operation of Hague as set out in this paragraph does not reflect what, at the time of writing, is technically on the UK statute book. Instead it reflects the UK Government’s current plans which have recently shifted from its original approach that was passed into law. The practical effect of this new approach would be, insofar as the English courts are concerned, to increase the potential applicability of Hague to cases involving ECCAs concluded before the end of the Transition Period. Click here for more comment/analysis of this point. Our analysis in this note of the effect of Hague in the English courts proceeds on the assumption that these plans are implemented.
Recognition and enforcement of foreign judgments in the UK

Similar to the above, during the Transition Period, the UK courts will continue to apply the current rules to the recognition and enforcement of a court judgment from the EU27 or a Lugano State.\textsuperscript{15}

Again, after the Transition Period, the default position in the UK would be that the common law would apply to such matters.\textsuperscript{16} Whilst this requires a fresh action, where the parties have used a jurisdiction clause in favour of the foreign court, the common law is generally receptive to this. In other cases, the common law rules, amongst other matters, require a defendant to have been present in the foreign jurisdiction, or made some other form of voluntary submission.

Once, again, however, this will be subject to two principal modifications similar to the above.

First, in respect of EU27 proceedings instituted before the end of the Transition Period, recognition and enforcement will continue under the Brussels I Recast (Article 67(2)(a) WA) (and, again, it appears that the UK courts will adopt a similar approach in respect of ongoing proceedings in the Lugano States and the Lugano Convention).\textsuperscript{17} As a practical point, therefore, if enforcement in the UK is likely to be required, litigants in those courts may wish to expedite their claims accordingly.

Second, in cases where an ECCA in favour of a Hague Contracting State falls within the scope of Hague then recognition and enforcement could be pursuant to it.\textsuperscript{18}

What are the consequences of the UK’s transition out of the EU for the use of English jurisdiction clauses?

- Conferring jurisdiction on the English courts

Even once the Transition Period is over, and beyond any separation provisions of the WA, the efficacy of an English jurisdiction clause in terms of conferring jurisdiction on the English court should not be significantly affected. Under the common law, the English courts would generally accept jurisdiction on that basis (although the potential increase in the need to obtain permission to serve out of the jurisdiction provides additional impetus - if any were needed beyond the usual benefit of avoiding the inconvenience/cost of serving abroad - to use a process agent (located in England) in contracts subject to English jurisdiction clauses). And, whilst Hague does provide a separate, convention-based, regime for the English courts to accept jurisdiction on the basis of an ECCA within its scope, the end result should not be wildly different in most cases.

- Protecting the jurisdiction of the English courts

To the extent such a clause is exclusive, similar observations can, generally, be made regarding to the degree to which courts in the EU27, Lugano and non-EU Hague States may decline jurisdiction on the basis of the clause. During the Transition Period, the EU27 will be required to treat the UK as an EU Member State so will continue to do so to the extent required by the current rules, and, in addition, separation provisions in the WA (Article 67(1)(a))

\textsuperscript{15} To be clear, Brexit only affects judgments coming into the UK from states covered by the Brussels I Recast, Lugano or (insofar as Hague is relevant) the non-EU Hague States. Enforcement of judgments from other states will continue to fall under whichever rules currently apply to them.

\textsuperscript{16} The position may be a little more nuanced regarding judgments from Austria, Belgium, France, Germany, Italy, the Netherlands and Norway as the UK has historic bilateral enforcement treaties with those states. Moreover, as of the time of writing, and in respect of those particular states, there does not appear to be a proposal to “deactivate” the relevant UK domestic legislation (the Foreign Judgments (Reciprocal Enforcement) Act 1933) insofar as it gives effect to those arrangements (which are currently subject to the European regime) as a matter of domestic UK law. The degree to which those arrangements were expressly superseded by subsequent European legislation might, however, cast some doubt on their continued scope of operation in a post-Transition Period future. To the extent not available, enforcement would be under the common law. It also appears that the Republic of Cyprus will remain designated for the purposes of the Administration of Justice Act 1920.

\textsuperscript{17} See footnote 13, above.

\textsuperscript{18} See footnote 14 above for general observations regarding the UK Government’s revised approach to domestic incorporation of Hague; which equally apply here.
will require them to continue to do so under the Brussels I Recast’s rules where proceedings have been instituted before the end of the Transition Period.

Beyond that, the “default” would be that an exclusive choice in favour of the English courts would be treated in the aforementioned courts as a “third state” clause. In such cases, for complex reasons, the general result would be the potential for greater inconsistency in the treatment of exclusive English clauses than there is now. On the other hand, any risks of parallel proceedings in future may, to an extent, be offset by the return of greater freedoms for the English court to protect its jurisdiction. For example, the use of anti-suit injunctions against proceedings in an EU27 or Lugano State court (provided the English court is not bound by the Transition Period, or other separation provisions, to apply the Brussels I Recast, or Lugano).19 To the extent that the clause is an (English) ECCA within the scope of Hague, that may also help before the EU27 (or non-EU Hague State) courts,20 especially if it was concluded once Hague has independently entered into force in respect of the UK.21 However, in respect of when this is, at the time of writing, due to happen, please see the end of “practical consequences” below.

- Recognition and enforcement of an English judgment

During the Transition Period, English judgments in the EU27 would continue to be enforced on the basis of the Brussels I Recast. Separation provisions in the WA (Article 67(2)) would also require the EU27 to continue to do this in respect of judgments handed down in proceedings instituted in England before the end of the Transition Period.

However, it should be appreciated that there is no obligation on the Lugano States to continue to apply the Lugano Convention to the UK (and English judgments) during the Transition Period. The Lugano States are not party to the WA and so their continued application of Lugano to the UK during the Transition Period would depend on whether they each choose to reciprocate the UK’s full application of Lugano during that time, and the same observations apply to non-EU Hague States and their application of Hague to the UK, English ECCAs and consequent English judgments. In respect of any such third state agreements, the EU, under WA Article 129(1), was obliged to notify such states that the UK is to be treated as an EU Member State during the Transition Period22 – but this was non-binding. Also, even if they complied, any further separation provisions (e.g. covering UK proceedings ongoing at the end of the Transition Period) would also be a matter for them.23

Outside the provision made by the Transition Period and the WA’s separation provisions (which, as stated above, only fully apply to the EU27 in any event) the default24 would be that the enforcement of an English court judgment

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19 English litigators may also wish to consider whether, in the event competing proceedings in such jurisdictions are a risk, commencing proceedings in England beforehand can help. For example, in a situation where the EU27 States may have general jurisdiction under the Brussels I Recast, prior proceedings in a non-EU State can help activate Articles 33/34 Brussels I Recast.

20 Although, in relation to the (negative) jurisdictional effect in the EU27 of an English ECCA under Hague, it may be (due to provisions governing Hague’s relationship with the Brussels I Recast) that any jurisdiction which an EU27 court would have under the Brussels I Recast may not be capable of being trumped by the ECCA unless one of the parties to the dispute is resident in a non-EU Hague State.

21 In relation to this timing point, the issue is that Hague does not apply to ECCAs entered into before it has come into force in respect of the State whose courts have been chosen (Article 16(1) Hague). Thus for English ECCAs entered into before the date on which Hague independently comes into force for the UK, there is a risk that other Hague Contracting States may not see these as within the scope of Hague due to the UK’s withdrawal from the EU; a view endorsed by the European Commission in its 11 April 2019 communication entitled “Questions and answers related to the United Kingdom’s withdrawal from the European Union in the field of civil justice and private international law” (see paragraph 3.3), and repeated in its 7 July 2020 communication entitled “Getting ready for changes” (at page 22). (Although, as part of its domestic incorporation of Hague, the UK proposes to enact into its domestic law a provision to clarify that, before its courts, 1 October 2015 is to be treated as the date on which Hague came into force for the UK (see here), the other Hague Contracting States will obviously not be bound by that).

22 See here for the notification sent in relation to Lugano.

23 Although Norway and Iceland have previously evidenced some willingness to formalise an orderly winding down of Lugano (in the event that the UK is not permitted to re-accede to it), whether such an agreement is concluded remains to be seen.

24 As noted at footnote 16, although the UK has historic bi-lateral enforcement treaties with Austria, Belgium, France, Germany, Italy, the Netherlands and Norway; the fact that these were expressly superseded by subsequent European legislation might create difficulties in respect of whether those regimes are available for, or otherwise capable of, “revival” in respect of an English judgment in a post-Transition Period future. For present purposes it should, therefore, be assumed that a “least-certainty” situation prevails and that they are not so available in those countries.
would, without more, be left to national law in the relevant EU Member State, Lugano State or non-EU Hague State - which may vary in its receptiveness. In other words, the ease of “exporting” an English judgment for enforcement in such places\footnote{Consistent with footnote 15, above, in respect of states outside the instruments under discussion (for example, the US) the position as regards enforcement of an English judgment will remain as before.} may be reduced in future.

- **Practical consequences for English jurisdiction clauses**

From the above it should be apparent that the main area of potential uncertainty in this field concerns future enforcement of an English judgment in the EU27, Lugano States, or (in cases where Hague would otherwise apply) a non-EU Hague State. Therefore, if it is possible that enforcement of an English judgment might, in future, be required in such a state then parties, when entering into contracts now, may wish to consider whether they need to take any steps to “Brexit-proof” against this.

What would this involve? In short, there may be no “catch-all” solution and it largely involves weighing up the costs/benefits in any given situation. In summary, the key points are:

Consider whether protecting against this “export” uncertainty is actually a material concern/priority. For example:

\begin{itemize}
  \item Are the adjudicative benefits of the English courts fundamental to your particular type of contract such that this outweighs any “export” uncertainty?
  \item Is it you who are more likely to be sued (in which case any such uncertainty is more an issue for the other party)?
  \item Does the counterparty have assets in England (or another state where English judgments are easily enforced)?
  \item Is this a situation where other security has been taken?
\end{itemize}

If not such a concern, then this “export” uncertainty may not deter from continuing to choose the English courts. If, however, “Brexit-proofing” against this uncertainty does still remain a concern, the two most straightforward solutions are either to take local advice on national law regarding the enforcement of an English judgment in the relevant state (at the end of this document are links to brief questionnaires summarising this position in a number of EU Member States) or consider using arbitration.\footnote{Enforcement of international arbitration awards can take place under the New York Convention, to which all EU27, Lugano States and the current non-EU Hague States (Mexico, Montenegro and Singapore) are party.}

Other potential solutions could be considered, for example jurisdiction clauses with flexibility to sue elsewhere. These are commonly deployed in some types of contract/situation where it may be that such flexibility provides an acceptable backstop to the enforcement issue under discussion (although that will depend on the circumstances including what that flexibility is). In a context where such clauses are not usual, however, one of the two options outlined above may be a more straightforward solution than adding complexity to the clause used.

It is also possible to choose an EU27 court, but (assuming English law remains the desired choice), that carries complexities; for example, having a foreign court adjudicate on English law, and the potential application of overriding mandatory provisions and public policy of the forum state. It is also possible to change to the law of an EU27 member state as well, but that may have a significant effect on the substance of a transaction – and would necessitate local advice accordingly.

A final point to keep in mind for the use of English jurisdiction clauses is making use of Hague to facilitate future enforcement of English judgments in other Hague Contracting States (including the EU27). As noted above, the UK, as part of its Brexit planning intends to independently accede to Hague. However, aside from the need to use a jurisdiction clause in the particular form of an ECCA, two further (timing) issues arise in respect of Hague and the UK.
First, due to the issue noted above, there may well be difficulty in relying on Hague in other Hague Contracting States where an English ECCA is concluded between 1 October 2015 and before Hague independently enters into force for the UK (i.e. any which are entered into now).

Second, is the question of when that latter entry into force date will be. The UK had previously, as part of its general “no-deal” contingency planning at the time the WA was in doubt, deposited an instrument of accession to Hague. However, due to the WA coming into force and the Transition Period applying, the UK, on 31 January 2020, withdrew that instrument. Its intention, as set out in that withdrawal notification, is now to deposit a new instrument of accession in the future with a view to Hague independently coming into force for the UK immediately following the end of the Transition Period. At the time of writing, on current timeframes, it therefore seems likely that the UK would take this action in September 2020 with a view to Hague (re)entering into force on 1 January 2021.

Other ancillary matters

In cross-border litigation before the English courts other EU instruments of judicial co-operation also stand to be potentially affected by Brexit. Chief amongst these are EU Regulation 1393/2007 (the “Service Regulation”), which provides for means of service of judicial and extra-judicial documents amongst the EU Member States, and EU Regulation 1206/2001 (the “Evidence Regulation”) which performs a similar task in respect of obtaining evidence from one EU Member State for use in another.

During the Transition Period, the UK will continue to apply these to deal with documents and requests from the EU27, and vice versa. The WA (Article 68) also contains separation provisions which would require the UK to continue to do so in relation to documents, or requests, from the EU27 received by the relevant body before the end of the Transition Period (and, again, vice versa).

Beyond the Transition Period and those separation provisions, the default position would be that these instruments would not apply between the UK and EU27, (and the UK would not seek to retain them in domestic law). The UK would, however, remain party to the 1965 Hague Service Convention, and the 1970 Hague Taking of Evidence Convention – which were pre-existing multi-lateral (i.e. not just within the EU) conventions which the UK has previously acceded to in its own right and which many of the EU27 are party to. These remain in force and should be available to effect post-Transition Period service of documents/evidence requests from the English courts in those EU27 States party to those instruments. Their provisions are, however, somewhat less streamlined than the EU Regulations in this area so, for example, in the area of service that may, once again, add further impetus to securing a process agent (located in England) in contracts with English jurisdiction clauses.

Conclusion – the future

There is lots of detail supplementing the messages summarised above. However, it is an unavoidable fact that the UK’s transition out of the EU stands to bring about a change to the face of private international law in civil and commercial matters in the UK. In the short term, generally speaking, much will remain the same but, following the end of the Transition Period (and assuming no other arrangements are concluded as part of the UK/EU27’s future relationship) the landscape will have significantly changed. In that respect, this is not necessarily something to fear as, whilst the disappearance of the Brussels I Recast & Lugano would be significant, neither the common law on jurisdiction, nor the Hague Service and Evidence Conventions have ever totally disappeared - the key would be in their return to prominence. And, of course, Rome I and Rome II would stay as “retained EU law” in the UK. Hopefully the above provides a helpful road map to understanding the potential lie of the land.

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27 See footnote 21.
Further resources

For more information on Brexit please visit our:

> Brexit Knowledge Portal
> Brexit SI Tracker
> Linklaters Brexit homepage
> Enforcement of an English judgment under national law – summary questionnaires
  - Belgium
  - France
  - Germany
  - Italy
  - Luxembourg
  - The Netherlands
  - Poland
  - Portugal
  - Spain
  - Sweden

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