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|--|---|
| <b>Title:</b><br><b>Impact Assessment on proposed European Community Regulations on Matrimonial Property Regimes and the property consequences of registered partnerships</b><br><br><b>Lead department or agency:</b><br><b>Ministry of Justice</b><br><b>Other departments or agencies:</b><br><b>Devolved Administrations</b> | <b>Impact Assessment (IA)</b>                 |
|  | <b>IA No:</b>                                 |
|  | <b>Date:</b> 15.4.2011                        |
|  | <b>Stage:</b> Consultation                    |
|  | <b>Source of intervention:</b> EU             |
|  | <b>Type of measure:</b> Secondary legislation |
| <b>Contact for enquiries:</b><br>Eral Knight, Tel: 020 3334 3843   |   |

## Summary: Intervention and Options

|   |  |
|---|--|
| <b>What is the problem under consideration? Why is government intervention necessary?</b><br>To consider whether the UK should exercise its right, under its Protocol annexed to the Treaty on the Functioning of the European Union, to opt in to and therefore be bound by the European Commission's two separate proposals on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2011) 126) and jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (COM(2011) 127). Only the Government can decide whether it should participate in the proposed Regulations.   |  |
| <b>What are the policy objectives and the intended effects?</b><br>The proposed Regulations seek to regulate the jurisdiction and applicable law as they apply to the daily management of the property of spouses and registered partners, in addition to seeking how to resolve disputes relating to the distribution of assets in cross-border situations following the ending of a couple's relationship through divorce, separation or death. Both proposals create rules to govern which court should have jurisdiction to deal with such disputes and which law should apply. The proposals also provide a mechanism for the recognition and enforcement of judgments of this kind throughout the EU.   |  |
| <b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b><br>The following options have been assessed against the base case of "no change". This would effectively mean the status quo continues with the UK exercising the right not to opt in to the revised Regulation and not participating in the negotiations :<br><br>Option 0 - Base Case ("Do Nothing"). A decision to not opt in at this stage would not necessarily preclude the UK from opting in at a later stage, but it would diminish the UK's influence in negotiations to shape the text, as the UK would not have any voting rights.<br><br>Option 1 - Exercise the right to opt-in to the Regulation and participate in the negotiations and be bound by the outcome. |  |
| <b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>   | It will be reviewed following conclusion and analysis of responses to consultation |
| <b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>  | Not applicable   |

**SELECT SIGNATORY Sign-off** For consultation stage Impact Assessments:

***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 SELECT SIGNATORY: ..... Date:.....

# Summary: Analysis and Evidence

# Policy Option 1

Description: "Opt – In" to the Draft Regulation

To opt in to the Regulation from the outset.

| Price Base Year | PV Base Year | Time Period Years | Net Benefit (Present Value (PV)) (£m) |                |                |
|-----------------|--------------|-------------------|---------------------------------------|----------------|----------------|
|                 |              |                   | Low: Optional                         | High: Optional | Best Estimate: |

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

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

**Other key non-monetised costs by 'main affected groups'**  
 Option 1 will impose costs on individuals and Government. Costs would be imposed on Government in the form of administrative, legal and procedural changes in implementing the Regulations. In effect, the changes proposed in both Regulations would require UK courts to apply foreign law to couples with an international element to their relationship and, if the UK participated it might be necessary to create systems of registration or notification of the existence of property regimes to help third parties. Costs are also likely to arise for third parties such as mortgage providers who could be required to apply foreign law to their contracts with the spouses/partners. Costs would arise for individual litigants owing to the need to prove foreign law as a matter of evidence in their case, and because of the possibility of the fragmentation of their case so that different aspects are heard in different jurisdictions.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low           |   | Optional   |                               |
| High          |   |  |                               |
| Best Estimate |   |  |                               |

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

**Other key non-monetised benefits by 'main affected groups'**  
 Couples in relationships with an international element could benefit from a clearer and swifter regime for recognition and enforcement of decisions relating to their matrimonial or registered partnership property across borders, leading to reduced legal costs. Married couples would have the opportunity to choose the applicable law to their property regime as well as being able to change this law, if there was consent between them. They would also benefit from increased legal certainty in that if they had not chosen the law applicable to their property regime, a 'closest connection' criteria would be used to determine the applicable law.

|  |                          |  |
|--|--------------------------|--|
| <b>Key assumptions/sensitivities/risks</b> | <b>Discount rate (%)</b> |  |
|--|--------------------------|--|

|  |             |  |                      |                 |
|--|-------------|--|----------------------|-----------------|
| <b>Impact on admin burden (AB) (£m):</b> |             | <b>Impact on policy cost savings (£m):</b> |                      | <b>In scope</b> |
| New AB:                                  | AB savings: | Net:                                       | Policy cost savings: | Yes/No          |

## Enforcement, Implementation and Wider Impacts

|   |       |      |                  |                    |       |
|---|-------|------|------------------|--------------------|-------|
| What is the geographic coverage of the policy/option?   |       |      | UK and Gibraltar |                    |       |
| From what date will the policy be implemented?  |       |      | To be confirmed  |                    |       |
| Which organisation(s) will enforce the policy?  |       |      |                  |                    |       |
| What is the annual change in enforcement cost (£m)?   |       |      |                  |                    |       |
| Does enforcement comply with Hampton principles?  |       |      |                  |                    |       |
| Does implementation go beyond minimum EU requirements?  |       |      |                  |                    |       |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions?<br>(Million tonnes CO <sub>2</sub> equivalent) |       |      | Traded:<br>N/A   | Non-traded:<br>N/a |       |
| Does the proposal have an impact on competition?  |       |      | No               |                    |       |
| What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?            |       |      | Costs:           | Benefits:          |       |
| Annual cost (£m) per organisation<br>(excl. Transition) (Constant Price)  | Micro | < 20 | Small            | Medium             | Large |
| Are any of these organisations exempt?  | No    | No   | No               | No                 | No    |

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

| Does your policy option/proposal have an impact on...?  | Impact | Page ref within IA |
|---|--------|--------------------|
| <b>Statutory equality duties</b> <sup>1</sup><br><a href="#">Statutory Equality Duties Impact Test guidance</a> | Yes    |                    |
| <b>Economic impacts</b>   |        |                    |
| Competition <a href="#">Competition Assessment Impact Test guidance</a>   | No     |                    |
| Small firms <a href="#">Small Firms Impact Test guidance</a>  | No     |                    |
| <b>Environmental impacts</b>  |        |                    |
| Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>                        | No     |                    |
| Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>                      | No     |                    |
| <b>Social impacts</b>   |        |                    |
| Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>                                | No     |                    |
| Human rights <a href="#">Human Rights Impact Test guidance</a>  | No     |                    |
| Justice system <a href="#">Justice Impact Test guidance</a>   | Yes    |                    |
| Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>  | No     |                    |
| <b>Sustainable development</b><br><a href="#">Sustainable Development Impact Test guidance</a>                  | No     |                    |

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

| No. | Legislation or publication  |
|-----|---|
| 1   | European Commission Green Paper (17 July 2006)  |
| 2   | UK Government Response to Commission Green Paper (April 2007)   |
| 3   | European Commission proposal on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2011)126) published 16 March 2011                     |
| 4   | European Commission proposal on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (COM(2011)127) published 16 March 2011 |
| 5   |   |
| 6   |   |
| 7   |   |
| 8   |   |

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

|                                  | Y <sub>0</sub> | Y <sub>1</sub> | Y <sub>2</sub> | Y <sub>3</sub> | Y <sub>4</sub> | Y <sub>5</sub> | Y <sub>6</sub> | Y <sub>7</sub> | Y <sub>8</sub> | Y <sub>9</sub> |
|----------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>Transition costs</b>          |                |                |                |                |                |                |                |                |                |                |
| <b>Annual recurring cost</b>     |                |                |                |                |                |                |                |                |                |                |
| <b>Total annual costs</b>        |                |                |                |                |                |                |                |                |                |                |
| <b>Transition benefits</b>       |                |                |                |                |                |                |                |                |                |                |
| <b>Annual recurring benefits</b> |                |                |                |                |                |                |                |                |                |                |
| <b>Total annual benefits</b>     |                |                |                |                |                |                |                |                |                |                |

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

## 1. Introduction and Background

### Scope of Impact Assessment

- 1.1 This Impact Assessment (IA) considers whether it is in the national interest for the Government, in accordance with the United Kingdom's (UK) Protocol annexed to the Treaty on the Functioning of the European Union (EU), to seek to opt-in to and therefore be bound by the European Commission's (from this point referred to as the Commission) proposed Regulations on '*Jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes*' and '*Jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships*'. The IA accompanies the consultation document '*Matrimonial property regimes and the property consequences of registered partnerships – How should the UK approach the Commission's proposals in these areas?*' ("the consultation document"). It assesses the costs and benefits of opting into the Regulations for the UK. It follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
- 1.2 The Government understands the Commission's reasons for proposing separate instruments for marriage and registered partnerships. The Government accepts that the rules on jurisdiction, applicable law and the recognition and enforcement of judgments in this area follow precedents which are already set out in other EU instruments and, in general, are not objectionable in circumstances where property regimes exist in the Member States. Certain benefits could accrue to European citizens as a result of the proposals, in terms of the predictability of the law that will apply to a property regime, and the ability to ensure recognition and enforcement of decisions on property matters that previously were a matter for the private international law rules of each Member State which could lead to extensive delay and expense in enforcing property rights. However, the Government has identified a number of potential difficulties arising from the proposals. These relate to the scope of the proposals, the application of foreign law, the relationship with the proposed Succession Regulation and the effect on the rights of third parties.
- 1.3 It is important to state at the outset that quantification of numbers, costs and benefits has not been possible at this stage. It is hoped that the results of the consultation exercise will assist both in developing this further and in underpinning the Government's decision on whether to participate in the Regulation or not. This impact assessment should therefore be treated as tentative.

### Objectives of Regulation

- 1.4 In March 2011, the Commission published two proposals: the first concerned a proposal on '*jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes*'; the second concerned a proposal on '*jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships*'. The aim of both proposals is to seek to regulate the jurisdiction and applicable law as they apply to the daily management of the property of spouses and registered partners, in order to assist in resolving disputes relating to the distribution of assets in cross-border situations following the ending of a couple's relationship through divorce, separation or death. Both proposals create rules to govern which court should have jurisdiction to deal with such disputes and which law should apply. The proposals also provide a mechanism for the recognition and enforcement of such judgments throughout the EU.
- 1.5 The proposed Regulations are the result of a broad consultation exercise which took place with Member States and others. In 2003, a study was commissioned on matrimonial property regimes and the property of unmarried couples. This was followed by a Green Paper, issued on 17 July 2006. The resultant effect of this work is the Commission's proposed Regulations.
- 1.6 As a result of its consultation, the Commission concluded that as more and more citizens in the EU move across national borders, this had led to an increased number of international

couples or couples with an international dimension to their relationship, for example spouses or partners of different nationalities, couples living in a Member State of which they were not a national, owning assets in different Member States or couples who had divorced or died in a country other than the one from which they had originated. In the Commission's view, the key problem is that as a result of individuals' increased mobility it is becoming more and more difficult for people to know which courts have jurisdiction and which laws apply to their personal situation and the situation of their property in light of their separation, divorce or death. The Commission has therefore created two proposals to address problems caused by national legislative differences concerning property regimes for married couples and registered partnerships. In general terms, these aim to:

- prevent parallel proceedings and the application of different substantive laws to the property regimes of a married or unmarried couple;
- ensure that spouses and partners are able to choose, as far as appropriate, the rules and legal provisions applicable to their situation;
- facilitate the recognition and enforcement of judgments and other decisions relating to international property regimes of married and registered couples;
- make it possible for parties to bring all legal matters relating to their case (as a result of separation or death which brings about the liquidation of the matrimonial regime) before the same court;
- ensure that spouses and partners know, where they have not chosen the applicable law, which law will apply in the event of the liquidation of their property regime;
- ensure compatibility with other EU rules, for example succession; and
- increase access to information on matrimonial property regimes and the equivalent for registered partners.

## Affected Groups and Sectors

- 1.7 The Regulation, if the Government elects to opt-in, would apply to all three separate UK jurisdictions: England and Wales, Scotland and Northern Ireland. Gibraltar, although a British Overseas Territory, is subject to EU Regulations in this field. The UK has responsibility on behalf of Gibraltar for the negotiation of relevant European instruments, and those instruments are directly applicable in Gibraltar if the UK decides to opt-in.
- 1.8 The following groups and sectors are likely to be affected by the Regulation, if adopted in the UK:
- *Judiciary*: When determining jurisdiction, applying the relevant foreign law and recognising judgments in international family law cases where it involves the property of a married or registered couple. This would include the courts and all supporting elements.
  - *Legal profession*: Specialist lawyers or law firms working in international family law matters, particularly those advising or acting on behalf of married or registered couples in relation to their property.
  - *Advice and mediation community*: Specialist centres or advisers who provide advice/mediation services to international married or registered couples in relation to their property as a result of divorce, separation or death.
  - *Financial institutions*: Financial institutions or insurers, where they may be deemed as the third party in the relationship of the property regime of the married or registered couple where this involves or could in future involve a cross-border element, e.g. mortgage lender.
  - *Individuals*. The property regimes of married or registered couples who have an international element to their relationship, such as being of different nationalities, living in a Member State of which they are not a national, owning assets in different Member

States or who divorce, dissolve their partnership or die in a country other than the one from which they originate.

- *Government.* In terms of legislation and the systems that apply to enable the implementation of European Union legislation.

## 2. Problem under Consideration

- 2.1 Many of the policy aims and objectives of the Regulations are designed to contribute to the continual development of the justice, freedom and security area which includes facilitating the principle of mutual recognition of judgments in civil and commercial matters, and extending mutual recognition to those areas which are not yet covered but are deemed essential to everyday life, for example matrimonial property rights. Although EU rules exist on jurisdiction and applicable law in civil and commercial matters and in some areas of family law, no rules currently exist for matrimonial property regimes or for property rights of registered couples. The subject matter is currently covered by national law and international agreements between some Member States.
- 2.2 The Commission claims that with more and more citizens moving across borders, and an ever increasing number of international couples or couples whose relationship has an international dimension, it has now become more difficult for people to know which courts have jurisdiction and which laws apply to their personal situation and to their property if their relationship ends through divorce, separation or death. The Commission cite that in 2007 in the EU, 13% of all marriages celebrated were international (307,158) and in the same year approximately 500,000 international marriages were dissolved through divorce or death. Also in the same year, there were 41,000 registered partnerships with an international dimension of which 4% ended in separation (8,500) and 0.6% (1,255) ended in death.
- 2.3 In an attempt to ensure greater legal certainty for married and unmarried couples, the Commission has proposed two Regulations. These are designed to facilitate a European area of civil justice in the field of property regimes for married and registered partnerships and provide common rules which set out which courts have jurisdiction and which law should apply to the property rights of such couples where this involves an international dimension.

## Differences in the law

- 2.4 Most Member States of the EU operate a codified regime in respect of matrimonial property regimes. The private international law rules used in such matters are governed by national law and any international agreements that may exist between the Member States. Among Member States where the concept of matrimonial property regimes exists, a distinction is often drawn between a legal matrimonial property regime (a set of rules which would apply in the case of a lack of choice by the spouses) and an optional regime (based on pre-nuptial or post-nuptial agreements). Depending on which country's matrimonial property law applies to the couple, rules will be different and assets will be considered as common or individual property. In addition, most property regimes are usually restricted to property acquired after marriage. Some, however, include the total property owned by the spouses, whenever acquired.
- 2.5 Other differences in relation to choice of applicable law exist between Member State systems which operate in such regimes. Some apply the law of the common nationality of the spouses. Some Member States, however, prefer to use the law of the domicile or the common residence of the spouses. In addition, most Member States will apply one and the same law to questions of matrimonial property irrespective of the location of the property. Others, however, prefer a system of splitting the applicable law and applying the *lex rei sitae* (the law where the property is situated) to immoveable property belonging to the spouses.
- 2.6 Similar laws have been established in some Member States for registered partnerships. However, the concept of registered partnerships only exists in 14 Member States which



means that not all Member States have substantive laws in this area and even fewer have jurisdiction rules and conflict of law rules. In addition, the concept of registered partnership is not uniformly understood even as between the 14 Member States who know the concept, so that the legal effects of a registered partnership under one law could be quite different to the legal effects under another law.

- 2.7 Unlike many of the Member States in the EU, UK jurisdictions do not have a codified regime applicable to the ownership of property between a couple during marriage (a marital property regime) or the property relating to a registered partnership (in the UK a civil partnership) (although Scotland does have a provision dealing with international disputes on matrimonial property). England and Wales and Northern Ireland do have regimes for resolution of property issues upon dissolution of the marriage or civil partnership, but those regimes are based on a wide redistributive discretion ranging over the entirety of the couple's resources, and so would probably not reflect the more codified regimes in the civil law systems. Upon death of a partner or spouse, the rules which apply are largely those which apply to succession in general – there is not a separate regime for spouses and partners to the regime for the rest of the estate, again, in contrast to most civil systems.
- 2.8 This lack of any such codified regime relating to the ownership of property by couples means that the courts in England and Wales and Northern Ireland approach such cases in a very different way to those in most Member States. During the life of the marriage or civil partnership, the property rights of the spouses are dealt with almost entirely as a matter of general property law. At the point of divorce or dissolution a court will consider the couples' financial circumstances as a whole, and will take account of a wider range of issues than matrimonial property regimes in other Member States usually cover – including maintenance (needs and resources, which is dealt with in the light of the capital division in the case, so in a more holistic way than continental systems appear to envisage), the division of capital including gifts and jointly owned companies (both of which are excluded from the scope of the Commission's proposals) and matters such as pension sharing and discretionary trusts (where the scope of these proposals is unclear). The financial provision in Scotland is different but provides key principles for the court to follow and provides that matrimonial property should in general be valued at the relevant date and shared equally. Although the approach in Scotland is very different to the approach in England and Wales and Northern Ireland, there remains an issue with the Commission's proposed regulations as the scope of the Regulations is different to what the Scottish courts have to consider when determining financial provision on divorce or dissolution of a partnership.
- 2.9 To accommodate the Commission's proposed Regulations, significant changes would be required to the UK's domestic system of laws (potentially legislative) and to the practices of its courts, in order to accommodate changes in international jurisdiction and the need to apply foreign law in cases with an international element.

## The proposed Regulations

- 2.10 The Commission states that in order to ensure greater legal certainty for married and registered couples in respect of their matrimonial property regimes, it is necessary to harmonise the legal rules in this area as well as introduce rules that will enable the automatic recognition and enforcement of judgments in such matters. This will eliminate the current confusion surrounding these regimes in terms of what law applies, which court has jurisdiction etc.
- 2.11 Although rules exist on jurisdiction and the applicable law in civil and commercial litigation and in some areas of family law too, no such laws currently exist for matrimonial property regimes or for the property consequences of registered partnerships. The subject matter is governed by national law and international agreements that exist between the Member States. The issue is also more complicated by the fact that the concept of registered partnerships itself does not exist in all Member States and therefore not all Member States have substantive laws on this matter.

2.12 The Commission has therefore proposed two Regulations: one relates to the marital property regimes of married couples; the other relates to the property consequences of registered partnerships. In the view of the Commission these proposals have been designed to:

- eliminate the possibility for parallel proceedings and the application of different substantive laws to the same property regime;
- overcome an insufficient choice of law for spouses and the acceptance of this in other EU Member States;
- deal with the non-recognition and enforcement of judgments, other decisions and deeds on the liquidation of property regimes;
- aid the difficulties of bringing all legal matters relating to one case before the same court;
- ensure that spouses or partners know that where no applicable law has been chosen, which law will apply to the liquidation of their property regime;
- be compatible with other proposed EU rules in relation to succession and wills and the applicable law in divorce proceedings; and
- eliminate the current limited availability and access to information on property regimes.

### 3. Cost Benefit Analysis

3.1 This section sets out some potential costs and benefits of electing to opt-in to the Regulation or not as the case may be, the costs and benefits associated with each option, and any associated risks.

## Scope of CBA

### Principles

3.2 The IA aims to identify, as far as possible, the impacts of the proposed Regulations on society. In particular, it considers whether they are likely to deliver a positive benefit and take account of economic, social and distributional considerations.

3.3 Dependant on underpinning this IA, is the answer to the following questions:

- what is the “economic problem” that the Regulations are seeking to address that has led to the relevant market or sector not to function properly?
- What options are available to resolve the resultant problems, and would the available options recommended in the Regulations have the desired impact?

To establish a case for Government action (to opt-in to the Regulation or not), an assessment of the possible costs and benefits of Government involvement must be made to show that benefits are likely to outweigh the costs.

3.4 In addressing these questions, the IA has focussed mainly on key-monetised and non-monetised impacts, with the aim of understanding what the net social impact on society might be from adopting the Regulation. It has not been possible to quantify costs and benefits at this stage. The IA indicates where further analysis might be done over the consultation period to inform the post-consultation IA.

## Policy Focus

- 3.5 In the time available, it is not feasible to undertake a forensic assessment of the entire Regulation. As such the IA restricts itself to some broad elements of the Regulation, and in particular, to a basic assessment of whether the proposed amendments are sufficient to enable the Government to elect to opt in to the Regulations or not.
- 3.6 As the Regulations are likely to change as a result of negotiations, it has been necessary to assume the worse case scenario, i.e. that the Regulation as drafted will create more difficulties for the UK than benefits.

## Issue of Standing

- 3.7 An important consideration for any cost benefit analysis is the relevant scope of the assessment. The scope of this IA includes:
- **Impacts that fall within the physical geography of the UK.** This means focusing on assessing the impacts of the Regulation on couples in the UK (married or in registered partnerships) who are of different nationalities and couples who own property abroad. This includes couples where one of the partners may be a national of another country other than the UK and the couple have property in other Member States of the EU. It also includes an assessment of the impact on other sectors, for example sectors that provide mortgages. The analysis excludes any impacts on other EU Member States.
  - **Impacts that fall on UK nationals living outside the UK.** Consideration has been given to UK nationals, resident, and married or in a registered partnership, in other Member States but who own property either in the UK or in other EU Member States.
  - **Impacts that fall on present and future generations.** In line with HM Treasury Green Book, an assessment has been made of the potential impacts of the Government electing to opt in to the Regulation, particularly in terms of those who may be affected by it. As the proposed Regulations could affect future generations, consideration has also been given to its impact over a minimum appraisal term of ten years.

## Economic Problem

- 3.8 The standard approach to regulatory or policy intervention is based on efficiency or equity arguments. Government usually intervenes if there is something wrong (a “failure”) with the way particular systems, markets or institutions operate. For example, the Government might consider intervening where existing or current laws are inadequate or where there is inefficiency or unfair outcomes. Through such interventions it is hoped that social welfare is increased through greater efficiency. Alternatively Government also intervenes to deliver distributive justice, e.g. poverty, reduction or a reduction of inequalities.
- 3.9 The policy problem set out under *Section 2*, concerns one of private international family law in the area of jurisdiction and the recognition and enforcement of decisions in matters of matrimonial property matters and the property consequences of registered partnerships. The “economic problem” under consideration is therefore best viewed from two overlapping perspectives – the EU and UK perspectives.
- 3.10 The underlying problem from the EU perspective is that the current arrangements, with respect to the property aspects of an international couple during or on the dissolution of their marriage or registered partnership, has become more complicated by the fact that more and more citizens move across national borders. This has led to an increase in the number of international couples or couples with an international dimension, for example spouses of different nationalities, couples living in a Member State of which they are not a national or owning assets in different Member States. The Commission believes a lack of rules in this

area has made it more difficult for people to know which courts have jurisdiction and which laws are applicable to their personal situation and the situation of their property. This, it believes, creates a barrier to free movement.

3.11 The Commission cites the following problems for married/registered couples:

- legal differences exist between Member States in relation to property regimes for married couples. The concept of matrimonial property regimes is used in all Member States with the exception of common law countries (e.g. in the UK and Ireland this concept does not exist at all, other than in Scotland). As such, some Member States distinguish between a legal matrimonial property regime (a set of rules which would apply in the case of a lack of choice by the spouses) and optional regimes (based on pre-nuptial or post-nuptial agreements). According to which matrimonial property law applies, rules will be different and assets will be considered as common or individual property.
- most property regimes are usually restricted to property acquired after marriage. Some, however, include the total property owned by the spouses.
- although most Member States apply the law of the common nationality of the spouses, others prefer to use domicile or the common residence of the spouses. In addition, most Member States will apply one and the same law to questions of matrimonial property irrespective of the location of the property. Others, however, prefer a system of splitting the applicable law and applying the *lex rei sitae* (the law where the property is situated) on immovable property belonging to the spouses.
- similar problems arise in registered partnerships in terms of the differences in the jurisdiction rules, conflict of law rules etc. However, the concept of registered partnerships only exists in 14 Member States which means that not all Member States have substantive laws on this matter and even fewer have jurisdiction rules and conflict of law rules.

3.12 The Commission believes that in eliminating these difficulties a number of financial benefits would accrue:

- simplifying the law would reduce legal costs for individuals. However, the limited choice of law for spouses and partners would, if these proposals are agreed, likely increase the number of marriage contracts and partnership agreements where these are available. This would undoubtedly increase the workload of the legal profession; and
- the ability to agree in advance the law to be applied would reduce the chances of the wealthier party rushing to court (forum shopping) to ensure the outcome of any proceedings are more likely to be in their favour;

3.13 From the UK's perspective, the question is whether the proposals suggested by the Commission in their proposed Regulations are something that the UK Government believes need to be addressed. Considering these questions demands an assessment on the impact, benefits and likely costs of the proposals and, in particular, whether the proposals address the UK's previously expressed concerns as well as bringing additional benefits to those who are likely to use or be affected by the Regulations.

3.14 The next sub-section assesses, from the UK perspective, the likely costs and benefits of the main provisions.

## Base Case (Option 0)

### Description

3.15 IA Guidance requires that all options are assessed against a common "base case". The base case for this IA has been assumed as "do nothing". This means that the UK would effectively exercise the right not to opt in to the Regulations proposed by the European

Commission. The UK Government can decide not to opt in at the start of negotiations but can request to participate after the Regulations have been adopted.

- 3.16 Under the base case there would be no changes to the current legal systems in the UK. The UK would continue to apply its relevant national law rules in this area and would not be bound by the Regulations. This would mean that the UK would continue to operate, in England, Wales and Northern Ireland, its system of giving wider discretion and consideration to the financial provision resulting from divorce or dissolution in relation to couples with an international aspect to their relationship where jurisdiction lies with these courts under existing private international law rules. Scottish courts would also continue to consider, in such cases, their key principles in determining that matrimonial property should in general be valued at the relevant date and shared equally. In addition, UK rules on the transmission of property between spouses and partners in relation to succession matters would be unaffected.
- 3.17 As the base case compares against itself, the net present value is zero. However, it should be noted that certain drivers are likely to change over time and may amplify the profile of impacts within the base case over time relative to the *current year*. The trend in recent years has been a decrease in the number of marriages in the UK. In England and Wales, for example, the provisional number of marriages registered in 2009 was 231,490. This represents the lowest number of marriages in England and Wales since 1895 (228,204). In 2009 there was also a decrease in the number of divorces throughout the UK. It is a little early to establish a trend for civil partnerships. The decrease in the numbers of marriages and divorce in the UK may not have a direct bearing on the Commission's claims that international marriages and registered partnerships are increasing but it is possible that this trend will be mirrored in relationships with cross-border elements.
- 3.18 By not opting in to the proposed Regulations, the laws which operate in the UK in relation to marriage, marital breakdown, civil partnerships and the dissolution of such partnerships would continue to be applied in all cases, including those with an international aspect, and the UK would continue to apply its private international law rules in this area as it does now. This would mean that there would be no changes to UK laws, judicial procedures and systems.

## Option 1 – “Opt-In”

### Description

- 3.19 **Exercise the right to *opt-in* to the Regulations.** By participating in the Regulations from the outset, the UK would be bound by the terms of the Regulations once adopted. This would mean that in situations where there was a cross-border element to a relationship UK courts would apply foreign law when considering disputes regarding the property of married couples and registered partnerships. Certain benefits are likely to accrue to European couples with a cross-border connection as a result of the proposals, in terms of the predictability of the law that will apply to a property regime, a close connection between that law and their factual situation, and the ability to ensure recognition and enforcement of decisions on property matters that previously were a matter for the private international law rules of each Member State, and which could lead to delay and expense in enforcing property rights.
- 3.20 The Regulations seek to address issues related to marital property regimes and the property consequences of registered partnerships in relation to jurisdiction, applicable law and the recognition and enforcement of decisions in such matters. The Regulations aim to establish common rules across the Member States on such matters, increasing legal certainty and simplifying current procedures.
- 3.21 For ease of analysis and presentation, the “opt-in” impacts have been separated into two broad areas:
- I. General Principles (the main substances of the Regulations)
  - II. Areas of concern for the UK



These are briefly described and their associated costs and benefits presented.

## I 'General Principles'

### Description

3.22 The Regulations aim to create common rules across the Member States of the EU in terms of the jurisdiction, the applicable law and the recognition and enforcement of decisions in relation to matrimonial property regimes and the property consequences of registered partnerships. The general principles of the Regulation are as follows:

- to simplify and create greater legal certainty for individuals on their personal situation as a result of marriage, registered partnership, divorce, separation or dissolution of a partnership.
- to enable a couple to choose the law that should apply to their matrimonial property regime;
- to enable decisions relating to marital property regimes or the property consequences of a registered partnership to be recognised and enforced;
- to make it possible for the legal matters relating to a married or registered couples property to be brought before the same court;
- to ensure, that where a married couple have not chosen the applicable law, they know which law will be available in the event that their marital property regime is liquidated;
- to ensure compatibility with other EU rules (eg succession, applicable law in divorce etc); and
- to increase access to information on matrimonial and patrimonial property regimes.

### Costs

#### Individuals

3.23 The Regulations are likely to impose further costs on individuals. The concept of matrimonial property regimes (or the equivalent for civil partnerships) does not clearly exist in the law of England and Wales and Northern Ireland as regards relationships during the currency of the partnership. Similarly the concept does not apply in the laws of England and Wales or Northern Ireland after the relationship ends. Courts in these jurisdictions have wide distributive discretion when considering ancillary relief which arises on divorce, or dissolution of a civil partnership. Prior to divorce or dissolution, the general law of property applies to the couple's property and in particular to their relations with third parties (for example mortgage lenders). In Scotland, there is provision on international disputes on matrimonial property. In addition, the law on financial provision on divorce and dissolution in Scotland lays down key principles for the court to follow and provides that matrimonial property should in general be valued at the relevant date and shared equally. However, the Government considers the Commission's proposals would create problems for all UK jurisdictions given that the proposals do not cover all aspects of financial provision on divorce or dissolution. When considering ancillary relief or equivalent financial provision courts only consider domestic law and take account of a wider range of issues than matrimonial property regimes in other Member States usually cover – e.g. maintenance (needs and resources), the division of capital, including gifts and jointly owned companies (both of which are excluded from the scope of the Commission's proposals), and matters such as pension sharing and discretionary trusts (where the scope of these proposals is unclear). In short, a wide view is taken of the capital resources available to the parties.

- 3.24 Under the Commission's proposals, it would be possible that courts in different Member States could take jurisdiction to deal with different aspects of financial provision on divorce or dissolution. Contrary to the intentions of the Regulation, therefore, this could increase costs and delays to parties and cause legal uncertainty and confusion.
- 3.25 In addition, the application of foreign law in family dispute cases is also likely to lead to additional costs for married or registered couples. Currently, UK courts do not normally apply foreign law in family dispute cases. The reason for this is that there would be a need to use experts to prove foreign law in the evidence submitted to the court and this drives up costs for the parties involved. It also tends to complicate the resolution of such disputes.
- 3.26 Third parties (including mortgage providers) would have to allow for foreign law to apply to contracts made with the couple. They would need to establish the existence of the relevant applicable law and then apply it to their contract. As there does not appear to be any provision to allow third parties and the spouses/partners to contract out of the applicable law where they have notice of that law, the only choice appears to be to refuse to contract or enter into the relevant legal relationship.

## **Government**

- 3.27 The adoption of the Regulations would lead to a number of significant changes being required to the legal and judicial procedures in practice in the UK. For the first time, UK courts would be required to apply the applicable law of an international couple upon dissolution of a marriage or registered partnership. Currently, only the law from the relevant UK jurisdiction is applied to a resolution of a dispute "ancillary to" matrimonial proceedings. Such changes would impose costs through the creation of new systems (for example, the creation of a national system to register the applicable law of a matrimonial property regime), and changes to the legal, operational and administrative process in order to satisfy implementation of the Regulations.
- 3.28 There may also be "opportunity costs" in terms of resources that would need to be diverted from other issues to ensure satisfactory implementation of the Regulation. These could include costs associated with Parliamentary time required to create and/or amend legislation, cross-Government action in putting in place the relevant systems needed for the Regulation to work in practice, eg retraining of staff – particularly the judiciary and court staff.

## *Benefits*

- 3.29 While individuals in relationships with cross-border connections may benefit from the ability to apply a different law to their property dispute, and easier recognition and enforcement of property regime decisions across EU borders, this has to be balanced against the fact that without a significant change to substantive UK laws and practices the Regulations are more likely to increase costs and delays to parties and cause legal uncertainty. They might also increase the possibility of tactical litigation, a fact not assisted by the current drafting of the proposals where it seems that there is no obligation on the parties to submit to the jurisdiction of the court hearing the divorce. Rather, the divorce court can only hear the property matters if the parties agree to that jurisdiction. The application of foreign law is also likely to drive up costs as experts will be needed to prove foreign law and this is likely to complicate the resolution of the case.
- 3.30 No benefits are foreseen for the Government.

## II Areas of Concern - “Effect on third parties”

### Description

3.31 The Regulations propose that a married or registered couple’s property regime and the law that will apply to it will also govern their relationship with any third party, for example, their mortgage provider. The Regulations propose that the applicable law will apply to that relationship (the relationship between the married or registered couple and the third party) on all matters that fall within the scope of the Regulations. The precise relationship (as to scope of the instruments) between these proposals and those of the “Rome I” Regulation (Regulation (EC) No 593/2008 on the law applicable to contractual obligations) is not clear, although matrimonial property regimes and regimes arising out of relationships having comparable effect (registered partnerships) are excluded from Rome I. National law may, however, provide some protection for the third party in that national law can provide that the third party must have been notified in some way of the existence of the property regime or ought to have known of the existence of such a regime before they can be bound by its effects. If the UK were to participate in these proposals, it would be necessary to consider whether to make such provision to assist third parties, and how it should be achieved.

### Costs

### Government

3.32 If the UK were to opt in, it would be necessary to introduce legislation to require either disclosure of a choice of law to third parties or to create a system of registration of the regime to which a couple were subject. Such changes would impose costs to Government, including those associated with Parliamentary time required to create necessary legislation, cross-Government action in putting in place the relevant systems needed for the Regulation to work in practice, e.g. retraining of staff – particularly the judiciary and court staff, and the maintenance of any registration system. Although EU Regulations are often given effect through secondary legislation, if any primary legislation was required that could take a significant period of time and is unlikely to be enacted in the same time frame as that required to implement the Regulations (ie 12-18 months). If the UK failed to implement the Regulations in time, it could incur a financial penalty for failing to do so.

### Individuals

3.33 Ordinary individuals entering into a legal relationship with a couple who are married or in a registered partnership will also be affected. For example, a family member who lends money to one of the partners in order for them to secure a property would not necessarily find it easy to find out the applicable law that would apply to the couple’s property regime. This could mean that they would need to seek additional legal advice prior to entering into a legal relationship with one or both of the couple on such matters, thereby incurring costs. If they did not appreciate the need to do so in advance of the transaction, they could find themselves bound by a legal system in a way that was wholly unanticipated, and which may involve them in further costs or even litigation. It is also possible that a mortgage lender or other commercial creditor may impose additional costs on individuals where property regimes involve a cross-border element, or refuse to lend at all.



## **Financial institutions:**

3.34 While corporate entities such as financial institutions or insurers might be more able than ordinary individuals to establish the existence of the relevant applicable law, the need to do so could lead to increased costs. It is possible that such institutions would, where such regimes involved a cross-border element, impose additional fees and/or other specific terms in their contracts with such couples. There does not appear to be any provision to allow third parties and the spouses/partners to contract out of the applicable law where they have notice of that law. The only choice appears to be the possibility that they could refuse to contract with such couples. That could lead to a decrease in the availability of lending and other financial benefits to such couples.

## *Benefits*

### **Individuals**

3.35 The benefit to individuals would be the ability to have a choice about the law that would govern the spouses'/parties' relationship with any third party. However, the proposed Regulations do not give any indication whether the third party and the spouses can contract out of the applicable law to the matrimonial property regime in situations where the third party has no notice of that law.

### **Financial institutions**

3.36 Financial institutions may welcome the flexibility of another law applying to their contracts. Indeed some foreign laws might be more favourable to the third parties than UK laws. However, it is very likely that third parties in the UK would be concerned about the complications of having to apply another law to their legal relationship with the couple and having no option to change the applicable law by agreement with the couple. In addition, the only protection that the third party is likely to have is to refuse to contract with such couples or impose costs on the individuals involved to eliminate their risk.

## **Areas of Concern - “Applicable law”**

### **Description**

3.37 The proposed Regulation on matrimonial property regimes enables married parties to be accorded a degree of freedom in choosing the applicable law. This would nevertheless be regulated to prevent a law being chosen which had little relation to a couple's real situation or past history. The Regulation concerning the property consequences of registered partnerships does not allow for the same degree of choice. This Regulation only enables the choice of the law of the State of the registration of the civil partnership. In addition, the matrimonial property regimes Regulation provides that where spouses have not chosen the applicable law to their property regime, a list of connecting factors will be used to determine the law that should apply. Provision is also made for married couples to change the applicable law. Such changes are not automatic, however, but voluntary. Consent must be expressed by the parties in order to prevent any legal uncertainty and will only apply in the future unless the spouses propose that it should occur retrospectively (although it is not permissible to apply the law retrospectively regarding pre-acquired rights of third parties).

## Costs

### Government

3.38 Unlike many Member States, courts in the UK do not normally apply foreign law in family dispute cases. This would therefore impose a change to UK law and court procedures in that any international law could apply if it fulfilled the requirements of the Regulation. As a result, there are likely to be “opportunity costs” in terms of resources that would need to be diverted from other issues to ensure satisfactory implementation of the Regulation. These could include costs associated with Parliamentary time required to create/amend legislation, cross-Government action in putting in place the relevant systems needed for the Regulation to work in practice, e.g. retraining – particularly of the judiciary and court staff.

### Individuals

3.38 As the Regulation enables the application of foreign law, if the UK were to opt in to the Regulations there would be a need to use experts to prove foreign law which in turn would drive up costs to parties. Ultimately it could also lead to complicating the resolution of such disputes. This would be particularly true where a married couple takes advantage of the provision contained in the matrimonial property regimes proposal to change the applicable law without retrospective effect. This would lead to the possible application of more than one applicable law to a number of different assets with the possibility of even more increased costs.

## Benefits

### Individuals

3.39 There would be benefit to married couples as they would be able to choose the law which should apply to their matrimonial property regime, and it might have a closer connection to their situation than the laws of the UK. In addition, they would have the opportunity to change the law as well as long as they consented to such change. It is questionable whether in terms of equality it is reasonable to prohibit registered partners from being able to make a choice of applicable law. While it is acknowledged that not all Member States recognise the concept of such partnerships, and those that do attribute different rights and effects to partnerships so that there is not one universal concept of “registered partnership” amongst such states, it is not clear why in appropriate circumstances partners could not choose the law of another Member State where there was such recognition of the concept.

## Areas of Concern - “Scope and Jurisdiction”

### Description

3.40 In the matrimonial property regimes proposal, the Commission states that the concept of matrimonial property regimes should be given an autonomous interpretation in order to enable a couple to manage their property as well as liquidate it as a result of the separation or death of one of the spouses. As a result, the Commission has excluded a number of matters which are covered by other EU Regulations or will be covered by future EU Regulations, for example maintenance, succession etc. Both also exclude gifts, and companies set up between the spouses or partners. In addition, the proposed Regulation on the property consequences of registered partnerships excludes the personal effects of such

partnerships. For both proposals, the Commission also states that the Regulations will not affect the nature of rights *in rem* relating to property or the classification of property and of rights. Nor will they determine the prerogatives of the holder of such rights. The disclosure of property rights, in particular the functioning of land registers and the effects of failing to make an entry in such a register, are also excluded from the scope of the Regulations.

- 3.41 The proposed Regulations also provide that a court of a Member State, which has been seised with an application concerning the succession of a spouse or registered partner shall also have jurisdiction to rule on either matrimonial property regime matters or those related to the property consequences of the registered partnership. On the registered partnership proposal, however, there is an exception in that a court may decline jurisdiction if it does not recognise the concept of registered partnerships. In addition, where spouses or partners separate, the jurisdiction of the court of a Member State dealing with the divorce, dissolution or the annulment of a marriage or registered partnership could, if the partners agree, deal with the matrimonial property or property consequences of a registered partnership which arise as a result of divorce, dissolution or separation.
- 3.42 The Regulations also propose rules to govern the jurisdiction which would apply in other cases, independently of any succession or separation proceedings (for example, a change of matrimonial regime at the request of the spouses). In registered civil partnerships, however, this would be dependant on whether the Member State designated recognised registered partnerships under its domestic law.

## Costs

### Government

- 3.43 The concept of matrimonial property regimes (or the equivalent for civil partnerships) does not clearly exist in England and Wales and Northern Ireland as regards relationships during the currency of the partnership. Similarly the concept does not apply in the laws of England and Wales or Northern Ireland after the relationship ends. Courts in these jurisdictions have wide distributive discretion when considering ancillary relief which arises on divorce, or dissolution of a civil partnership. Prior to divorce or dissolution, the general law of property applies to the couple's property and in particular to their relations with third parties (for example mortgage lenders). In Scotland, there is provision on international disputes on matrimonial property. In addition, the law on financial provision on divorce and dissolution in Scotland lays down key principles for the court to follow and provides that matrimonial property should in general be valued at the relevant date and shared equally. When considering ancillary relief or equivalent financial provision courts across the UK only consider domestic law and take account of a wider range of issues than matrimonial property regimes in other Member States usually cover – e.g. maintenance (needs and resources), the division of capital, including gifts and jointly owned companies (both of which are excluded from the scope of the Commission's proposals), and matters such as pension sharing and discretionary trusts (where the scope of these proposals is unclear). In short, a wide view is taken of the capital resources available to the parties.
- 3.44 As a result of the Regulations, if the UK was to opt in, significant costs would accrue in making changes to the UK's legal systems and practices in this area. This would include costs associated with Parliamentary time required to amend legislation, cross-Government action in putting in place the relevant systems needed for the Regulation to work in practice, e.g. retraining – particularly the judiciary and court staff.

### Individuals

- 3.45 Contrary to the intention of the Regulations, this is likely to increase costs and delay for parties as well as adding potential layers of legal confusion. The fact that courts in different Member States could have jurisdiction for maintenance, matters within scope of the

proposals, and matters other than maintenance outside the scope of the proposals, raises the potential for fragmentation of the resolution of financial matters among different jurisdictions. That would raise costs for parties and also increases the prospect of a “rush to court” and tactical litigating.

- 3.46 There is a further problem with the potential fragmentation of jurisdiction in succession matters concerning registered partners, because of the ability of a court to decline jurisdiction to deal with the succession as regards the registered partnership under Article 3(2) of the registered partnership proposal. This allows a fragmentation of the succession case in a way that is not permitted in the Succession proposal nor in the Matrimonial Property regime proposal, and would inevitably drive up costs and delay in such a case.

### **Benefits**

- 3.47 There will be some increased choice for individuals to decide the courts with jurisdiction in such cases.

### **Areas of Concern - “Other issues”**

- 3.47 A number of issues arise from the proposed Regulations where further clarity is needed in order to assess their impact. Consideration will also need to be given to the fact that the Commission has attempted, in drawing up their proposals, to align the rules with those contained in other Regulations such as succession.

### **Succession**

- 3.48 On 14 October 2009, the European Commission published a proposed Regulation on ‘*Jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession*’. The aim of this proposal is to simplify cross-border succession matters on death. In December 2009, the UK Government decided not to opt in to this proposed Regulation, although it actively participates in the current ongoing negotiations. A decision has yet to be made, therefore, on whether the UK will participate in the final, adopted Regulation.
- 3.49 The relationship between the Succession Regulation and that proposed on matrimonial property regimes and the property consequences of registered partnerships raises a number of issues. The proposed Regulation on succession excludes from its scope certain property law rights, in particular property held by way of joint tenancy, which pass by survivorship on death. This legal interest is a key element of the property laws of each of the UK jurisdictions and one of the commonest means for the transmission of property between spouses or partners. It also falls outside the scope of English succession proceedings. If it were to fall within the scope of these proposed Regulations in relation to property, consideration would need to be given to the impact in this area, particularly as a result of the application of foreign law and in particular its consequences on the transmission of immovable property in UK jurisdictions. There is also the possibility of a fragmentation in the succession proceedings of a registered partnership because of the ability of a court to decline jurisdiction to deal with the succession as regards the registered partnership under Article 3(2) of the registered partnership proposal.

## 4. Specific Impact Tests

- 4.1 The Impact Assessment Guidance sets out a number of tests which need to be assessed. We have focused on those tests that may be relevant to the Regulation.

### Competition Assessment

- 4.2 The markets affected by the proposed Regulations could include financial institutions that provide, for example, mortgages. The potential impact on competition is therefore difficult to assess at this stage. It may be that the existence of these Regulations could produce shifts in where people try to litigate, which affects lawyers. Further consideration will be given over the consultation period.

### Small Firms Impact

- 4.3 The IA Guidance requires that new proposals are assessed on the extent to which they impose or reduce the costs on business. It is unclear at this stage what impact there would be, if any, on small firms. Further information on any particular impact on small firms, and the likely costs to their business, will be considered during the consultation period.

### Justice Impact Test

- 4.4 It is considered that the proposed Regulations could have an impact on legal aid, e.g. the costs of cases in this area are likely to increase if the UK was to participate. The proposals are also likely to have a significant impact on current justice systems. These impacts are discussed in the main IA above. Further consideration will be given to this from evidence received as a result of consultation.

### Human Rights

- 4.5 The proposed Regulations, if adopted, will be compliant with the Human Rights Act.

### Equalities Impact Assessment

- 4.6 If the UK did opt in to these proposed Regulations it is likely that the enforcement of orders in other Member States following the dissolution of civil partnerships would become easier because Member States would be unable to refuse enforcement on the grounds that they do not recognise registered partnerships. However this needs to be balanced against the significant changes that would be required to the UK's laws and legal practices to allow the Regulations to apply in the UK. A screening exercise for race, disability and gender shows no evidence to suggest that electing to opt-out of the Regulation would have any specific race, disability, gender or equality effects. Consequently, the Ministry of Justice has decided that a full equality impact assessment is not required. The Government is concerned, however, that a degree of inequality is contained in the Regulation concerning the property consequences of registered partnerships. In this proposed Regulation, civil partnerships do not have the same degree of choice as to the applicable law as married couples. This may be because the differences between the laws of those Member States that do have the

concept, and the fact that many Member States do not have the concept at all, make that impractical. This matter will be considered further during the consultation period.

## Rural Proofing

- 4.7 Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. It is a mandatory part of the policy process, which means as policies are developed, policy makers should consider whether their policy is likely to have different impacts in rural areas, because of particular circumstances and if so adjust the policy where appropriate, with solutions to meet rural needs and circumstances. The initial assessment made suggests that there are no specific rural impacts from the proposals. However, further work will be done over the consultation period to fully assess any possible implications.

## Health Impact Assessment

- 4.8 The Ministry of Justice has concluded that a health impact assessment is not necessary. The proposed Regulation will not have a significant effect on human health or have an effect on the wider determinants of health. In addition, it will not impact on the lifestyle-related variables provided in the guidance or on health or social care services.

## Sustainable Development

- 4.9 The Ministry of Justice has concluded that there are not any significant environmental impacts resulting from the proposed amendments to this particular Regulation.

## Enforcement and Implementation

- 4.10 The decision to participate in the Regulations from the outset or elect to participate in the Regulation at a later stage does not require any specific enforcement, sanction or monitoring mechanisms. The Regulations will be applied by the courts on a case by case basis.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

## Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

If implemented, the Regulations would be the subject of a review by the European Commission 5 years from the date of their adoption.

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The review would take account of the application of the Regulations since coming into force and whether problems have occurred which required rectification.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The European Commission will produce a report on the application of the Regulation which may be accompanied by a Green Paper proposing areas where the Regulation may be subject to amendment in future.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

From when the proposals are in force.

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

The application of the agreed Regulations will be monitored by the European Commission.