

IMPACT OF BREXIT ON ENGLISH FAMILY LAW

A considerable amount of the way England practises family law is impacted by our membership of the EU. Whilst in many instances other legislation, including various Hague Conventions can provide similar protections and procedure, **Brexit** would nevertheless have a potentially significant impact on separating families with an English connection.

Whilst **Brexit** would bring a number of technical impacts about how laws would be made, protected or applied worldwide, here I give just some examples of the potential practical implications of **Brexit** for families with an English connection living worldwide.

- Many expat families or couples have the ability to bring separation or divorce and related financial proceedings in more than one country. Therefore perhaps one of the most fundamental changes would be that the law governing the country where a divorce takes place (when there is a dispute as to which country should apply) would change significantly. At the moment, within most of the EU it is the country in which proceedings are issued '*first in time*' which secures jurisdiction on a mandatory basis (i.e. an unchallengeable basis) regardless of the strength of the family's connection to the alternative possible jurisdiction(s). Upon **Brexit** this would no longer be the case. Therefore initially at least (pending any change in domestic, English law) there would remain scope to challenge another country within the EU where divorce proceedings were issued first in time.
- Whilst the element of certainty EU law brings with this '*first in time*' principle can be helpful, it hinders mediation and other conciliatory approaches to reconciliation or settlement. This is because the race to issue created by the principle means there can be no discussion about these matters in advance because the other party might then rush to issue in the country which is more favourable to them (and the implications of issuing in the wrong jurisdiction can be very significant indeed).
- Another significant change if **Brexit** were to arise relates to the formal sealing/ratification (and hence ability to use) various important and helpful international conventions with countries outside the EU. At the moment even if England wants to be able to access the benefits of various international conventions the EU as a whole has to sign up with each non-EU country. This makes the process frustratingly cumbersome particularly where certain EU countries have a greater volume of legal problems with certain non-EU countries than others or where they have significantly greater historic links with particular non-EU countries.
- An example of how this impacts some family law cases is illustrated below:

Over five years ago, Singapore signed up to the Hague Convention on child abduction. (Russia is also set to do so next year). Many non-EU countries have already approved and sealed/ratified Singapore in this legislation. However, owing to the fact not all of the EU has agreed to ratify/seal Singapore's inclusion to the Hague Convention on child abduction this convention cannot be used in England. Therefore we cannot currently return children who have been abducted between these countries using the simpler mechanism provided by the

Hague Convention. We must instead rely on the more cumbersome and more discretionary route using something called *Wardship* procedure.

If **Brexit** occurs, England will be able to decide unilaterally whether or not to ratify/seal such conventions with specific countries regardless of whether the whole of the EU wants to do so.

Generally

Brexit might bring with it some advantages to one spouse/partner in an international family with English connections, but it will therefore inevitably bring consequent disadvantages to the other.

If **Brexit** arises there will be a lot of uncertainty as to how family law will be practised and developed and a very close eye will need to be kept on prospective changing legislation in English, domestic family law or any re-negotiated arrangements with Europe.

Consequently, if you are contemplating divorce or separation you would be better placed to consider your options now. It might transpire that the potential uncertainty created by leaving the EU serves to potentially either benefit you or prejudice your situation, but until you enquire about what happens now, you will not know.

If you would like further information about this topic please contact Lucy Greenwood or David Hodson at The International Family Law Group LLP (IFLG) www.iflg.uk.com by emailing (familyexpatenuquiries@iflg.uk.com).

A more detailed article can be found at <http://www.davidhodson.com/news/eu-referendum-impact-on-family-law-of-a-vote-to-leave>