

A young man and woman are sitting on a grey sofa in a bright, modern living room. The man is wearing a yellow t-shirt and blue jeans, and the woman is wearing a pink t-shirt and blue jeans. They are both smiling warmly at the camera. A golden retriever dog is sitting on the floor in front of them, looking happy with its tongue out. The background features a white shelving unit with various decorative items like plants, books, and baskets.

Brabners
personal

International Family Law

Supporting you across global boundaries

Contents

Introduction

Life is full of twists and turns and changing circumstances can impact your wealth.

Landmark life events such as marriage, moving in with a partner, or a divorce can change your position in relation to family wealth, and sometimes put it at risk.

Protecting your wealth and your family can be challenging in these situations, particularly if there is an international component to consider. Anyone who has links to more than one country, will want to consider the options available



Wealth Protection

A relationship agreement, such as a pre-nuptial or post-nuptial agreement, or a cohabitation agreement, can safeguard and protect your assets and income should the relationship break down.

The guidance and documentation you need may be different depending on the country you live in, so it's always a good idea to get professional advice.

Whatever your circumstances, a specialist family law solicitor can advise you on just what it is you require, to ensure peace of mind when it comes to the matter of wealth protection.

Pre-nuptial and post-nuptial agreements

What are they?

The 'pre-nup' or 'post-nup' has become an increasingly common consideration for those getting married or entering into a civil partnership.

A pre-nup sets out an agreed outline of how you would divide your assets and income if you were to ever divorce. The agreement can "ring-fence" particular assets that you wish to keep out of any division, such as certain properties, a trust, inheritance, or a business. It can be flexible and provide for different outcomes, depending on how long the marriage has lasted for example, or whether there are children to consider.

A post-nup is the same type of agreement, but it's prepared after your marriage or civil partnership has taken place.

Are they legally binding?

Pre-nups and post-nups are not legally binding in England and Wales, so you can't override the court's ability to decide how your finances should be divided if you divorce. But the court must give appropriate weight to a pre or post nup agreement (depending on a range of factors) when considering an application for financial provision in divorce proceedings.

Following a Supreme Court decision in 2010, the court will generally uphold a pre or post-nup that was freely entered into by both parties, with a full understanding of the implications of the agreement, unless the circumstances at the time of the separation mean it wouldn't be fair to hold you to it.

As long as the agreement has been prepared properly and the fairness test is met, you can expect the family court to support a pre-nup or post-nup. Think of these agreements as similar to insurance cover, with exclusions and limitations that apply.

What are the advantages?

If you separate or divorce, an agreement can:

- **Save money:** while you and your partner would incur legal fees for any advice and for the preparation of the terms of an agreement, it's usually far less expensive to draft a document now, than to litigate about the division of your assets later.
- **Provide clarity:** you and your partner can agree on how some or all of your finances would be divided. You can make clear to one another, the assets or income that won't be part of any division, saving you uncertainty, time and tension when emotions can be high.
- **Protect assets:** you and your partner can protect assets you may wish to ring-fence from one another, such as inherited assets, family heirlooms, an interest in a family business, gifts received from family, or property acquired before the marriage.
- **Protect family members:** if there are children from a previous relationship, a pre or post-nup can protect their financial interests by ensuring certain assets are ring-fenced for them.
- **Minimise acrimony:** setting out how assets are to be divided, should lead to fewer arguments and result in a more amicable relationship between you.

- **Protect business partners:** An agreement can prevent disruption to your business by protecting shareholders, especially if you are both employed in the family business or hold shares in it. This could prevent a situation where you or your partner are awarded an interest in the business, and/or have to continue to run the business with family members or business partners, following a divorce.
- **Provide freedom:** you and your partner may have a creative plan for dividing your assets if you were ever to divorce. A pre or post-nup gives you the freedom to agree your own terms without the court necessarily imposing a solution on you.

Should you have a pre-nuptial agreement prepared in England and Wales?

If the courts in England and Wales potentially have jurisdiction to deal with your divorce, then you may want to consider getting a pre or post-nup prepared here. This will provide some protection if you or your partner ever decided to start divorce proceedings in England and Wales at any point in the future. A specialist family law solicitor can advise you on whether this could be necessary or helpful.

The courts in England and Wales could have jurisdiction if any of the following apply:

- You or your spouse have lived in England and Wales in the past
- You currently live in England and Wales
- You expect to live in England and Wales in the future

- You or your parents were born in England and Wales
- You live abroad but you still consider England and Wales to be your permanent home

Should you have a pre-nuptial agreement prepared in another country?

You may need an agreement prepared in more than one country, if there is more than one country which could potentially deal with your divorce.

To ensure you've protected your position fully, you'd need to consider getting a pre or post-nup drawn up in all the countries that could apply. In those circumstances, the lawyers in each country could work together to prepare separate agreements that 'mirror' the division of assets and income, so it's broadly the same in each country.

This scenario could arise if any of the following apply:

- One or both of you were born outside of England and Wales
- One or both of you are a citizen or national of another country
- You live abroad or spend significant time abroad
- You have assets in other countries
- One or both of you have some other significant connection to another country

A family law solicitor can consider your specific circumstances and let you know whether more than one agreement could be needed.



Cohabitation agreements

What are they?

A cohabitation agreement records the arrangements between two or more people who have decided to live together. They're frequently entered into by couples who are in a romantic cohabiting relationship but are not married or in a civil partnership.

The agreement records each person's rights and responsibilities in relation to the property which you live in (or intend to live in) together. It can also specify what the financial arrangements between you will be, both during the relationship, and in the event that it ends.

This may be particularly helpful if one person is moving into a property owned by the other, or is making unequal financial contributions to it.

Could I need one even if I don't permanently live in England and Wales?

A cohabitation agreement is useful for anyone who lives and owns property in England and Wales, even if your time here is not expected to be permanent, for example, you may be here for work purposes, or just plan to live here for a few years.

A cohabitation agreement can be a useful piece of protection for couples, regardless of your nationality or permanent home, if you're going to be living together in England and Wales at any time.



International Divorce Proceedings

When a divorcing couple have international connections, the question of which country is most appropriate to deal with their upcoming separation and financial settlement, is likely to come up.

Each country has its own laws relating to divorce and financial matters, and in situations where there are competing jurisdictions, it's often the case that one country's approach will be much more favourable to one party than the other.

So disputes can arise between separating spouses with international connections, as to which country is most appropriate to deal with their divorce. Making a strategic decision to issue your divorce proceedings in a country with favourable laws, is known as "forum shopping".

England and Wales has long been considered the "divorce capital of the world", because its laws are considered to be the most generous in Europe for ensuring the needs of a financially weaker party are met after separation.

What is an international divorce?

The simple answer is that an international divorce occurs when a separating couple have connections to another country. The most obvious example is where a couple have relocated, or where one or both parties were not born in the UK. There may also be circumstances where assets are held in other jurisdictions, which will give rise to international considerations, particularly with regard to enforcement.

Many would associate the term "international" with warmer climates and holiday homes in the south of France, but it can be much closer to home. It's a common misconception that the law in Scotland, is the same as in England, but the approach in Scotland to spousal maintenance is drastically different, and much more limited, than the regime in England and Wales.



Does it matter where we get divorced?

Each country has its own set of unique laws regarding divorce and the division of matrimonial assets. Whilst there are several countries that share a lot of similarities in the way that assets are divided, there are just as many (if not more) that adopt a much more polarising approach.

For example, under UAE law in Dubai, the starting point is that each party would simply retain the assets and property held in their respective sole name. This would result in the financially weaker party being left in a particularly difficult situation.

The law in England and Wales provides that matrimonial assets should be divided equally as a starting point, regardless of who's name the assets are held in. The Family Court in England and Wales will, if necessary, make a departure from equality in order to meet the needs of the financially weaker party – “needs” being a subjective concept dictated by the marital standard of living.

In England and Wales it's possible (albeit now fairly uncommon) for the court to order that one party pays spousal maintenance to the other on a “joint-lives” basis; whereas in Scotland the general rule is that the maximum term for spousal maintenance payments is 3 years following the parties' financial settlement, highlighting just how different the approach to divorce and the division of assets can be in different jurisdictions.

You could achieve drastically different financial settlements depending on where your divorce proceedings take place. It's therefore extremely important to take advice in respect of the appropriate country to issue divorce proceedings, before making an application.

What impact will Brexit have on international divorce?

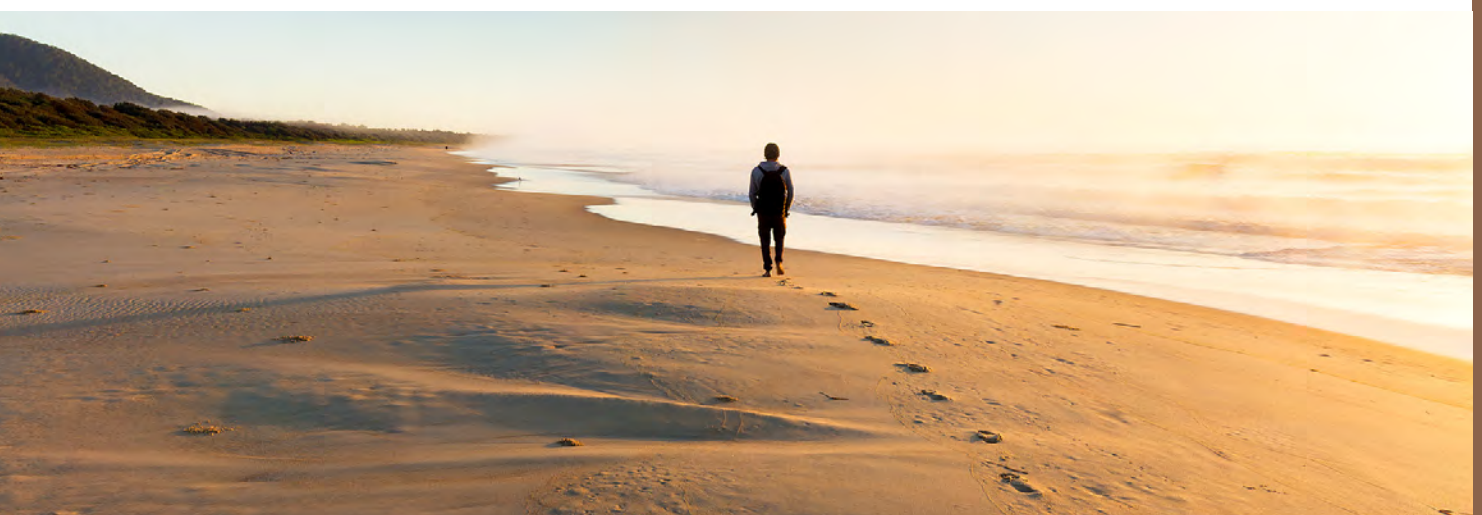
For EU citizens, this was an issue governed by EU law prior to Brexit. There are EU regulations which confirm the grounds on which you can bring a divorce in an EU member state; the parties would then “race” to issue proceedings in the country with the divorce laws most beneficial to them, on the basis that the court seized first in time, would be deemed to have jurisdiction.

The long-term implications of Brexit on the ability to forum shop are unclear. What we do know is that currently the position in England and Wales has reverted to the pre-EU regulations, which exist in other non-EU countries. This means that cross-jurisdictional divorces may involve lengthy and costly disputes regarding jurisdiction, replicated proceedings and possibly irreconcilable disagreements.

The jurisdictional basis to bring a divorce or dissolution of a civil partnership in England and Wales are currently wider than they were previously – and so for the time being, it's actually easier for international couples to issue proceedings in England and Wales than it was prior to Brexit.

Will an international divorce be complicated and expensive?

The reality is that international divorce can be fraught with complexity, due largely to the different laws and remedies that exist across different jurisdictions, and the complex nature of the law surrounding domicile and habitual residence. However, a lot of these issues can be avoided or alleviated if advice is sought at an early stage, so that proper consideration can be given to the variety of options you may have.



Financial Settlement after an Overseas Divorce

When separating, it's common for a couple to divorce in the country they live in. There's no requirement to apply for a divorce in the same country that you married in. However, some people who divorce abroad may not have been able to get a financial settlement in that country, or, the financial settlement they received might not have been fair, or it might have been unable to deal with assets that were based in England and Wales.

There is provision under Part III of the Matrimonial Family and Proceedings Act 1984 ("Part 3") for the Family Court in England and Wales to provide a financial settlement for some couples who may have divorced abroad.

When can an application be made?

To make an application under Part 3, there are certain criteria which you must meet:

1. The marriage must have been dissolved or annulled, or the parties to the marriage have been legally separated by means of judicial or other proceedings in an overseas country, and
2. The divorce, annulment or legal separation is entitled to be recognised as valid in England and Wales, and
3. At the date of application:
 - a. Either party was, at the time of the application or of the foreign decree, domiciled in England and Wales
 - b. Either party was living in England and Wales for a period of one year up to the date of the application for leave, or the date when the foreign divorce, annulment or legal separation took effect
 - c. Either party has or had at the material time, an interest in a family home based in England and Wales

To determine issues relating to domicile or habitual residence you will need to take legal advice from a specialist international family lawyer.

How do you make an application?

Step One - Permission

Firstly, you must apply to the court for permission to make an application under Part 3. The court will only grant permission where it considers there's a substantial, or solid ground for making an application.

The court will also determine whether it's going to be appropriate to provide financial relief to the applicant. This means that the court will consider:

- The couple's connections to England and Wales, and
- The couple's connections to the country where the marriage was dissolved or annulled or where they were legally separated, and
- The couple's connections to any other countries

The court will also consider:

- Any benefit that the applicant, or a child of the family has received, or will receive, as a result of the divorce, annulment or separation
- To what extent an order made abroad has been complied with
- Any right that the applicant has or had to make an application for financial relief abroad, and why no relief was sought if the applicant was eligible and chose not to apply
- Whether there are any assets in England and Wales that could be given to the applicant
- The extent to which an order made is likely to be enforceable
- The time that has lapsed since divorce, annulment or legal separation



Step Two - Application

If permission is granted, then the applicant can apply to court for financial relief. In many ways the process is very similar to seeking a financial order within the context of divorce proceedings made in England and Wales.

The key steps in the application process are:

1. Financial Disclosure – This is usually the starting point, and means that each party will be asked by the court to provide full details of their financial circumstances.
2. First Court Hearing – At the first hearing, the court will look at everything the parties need to address, to make sure that negotiation takes place. For example, if the value of assets are agreed or if valuations will be needed, whether a specialist accountancy or pension report is required, and if there are any gaps in either parties' disclosure.
3. Second Court Hearing – This is a negotiation hearing. There's a duty on both parties to make offers to settle matters before the hearing, and time is allotted for each party to set out their case before the court. The judge will make indications as to the possible outcome of the case, to aid negotiations.

If an agreement is reached at any stage in the process, a consent order can be prepared, and proceedings will be concluded.

4. Third Court Hearing - If an agreement can't be reached, the court will impose an order at the third and final hearing.

What types of orders can the court make?

Ultimately the court will be asked to consider whether it's appropriate for an order to be made in this country. Obtaining permission under Part 3 does not guarantee that the applicant will be successful in their final application.

The court has extremely wide jurisdiction, and the most common orders that the court will make are:

- Interim orders for assistance with legal fees
- Interim or longer-term maintenance for the spouse or children
- Transfer/sale of property
- Payment of lump sums
- Pension sharing order

Making an application for financial relief is a complicated process, and specialist advice from an international family lawyer will be required.



International Children Matters

Making arrangements for children following separation and divorce can be very difficult, but when it involves relocation, particularly international relocation or relocation out of the jurisdiction, it's an extremely difficult and emotive subject.

Relocations happen for a variety of reasons. One parent may have remarried and have a new partner who has a business or a job elsewhere, or the parent themselves may have been offered employment elsewhere. A parent may wish to move back to be near their family after a relationship has broken down, or simply for lifestyle reasons, such as being in the country rather than the city.

If there's already a Child Arrangements Order in place, regulating how the children share their time between parents, neither parent can remove the children from the UK without the Court's permission or the consent of everyone who has parental responsibility. The slight exception to this rule is that the person named in the Child Arrangements Order as the person that the children lives with, may take them out of the country for up to 28 days without permission.

If you wish to relocate with the children, whether within this country or overseas, the correct procedure is to apply to the Court for a Specific Issue Order.

Internal and External Relocations

Historically internal relocations (relocations within this country) were treated differently to external relocations (relocations overseas). There was a view that there should be less restriction on a parent's movement with children in England and Wales than there should be on international moves because of the "likely adverse effect on the welfare of the child by denying the primary carer reasonable freedom of choice".

The core test for international relocation is the welfare of the child. The court will undertake a global holistic welfare evaluation, to decide what is in the child's best interests, taking all circumstances into account.

Today, following a court clarification in 2015, stating that there was no reason to distinguish between internal and external relocation cases, internal applications are now also determined by the child's welfare (in accordance with the full welfare checklist).

Therefore, if you wish to relocate with children, whether in England and Wales, or overseas, you must give very careful thought to whether the move is in the children's best interests.

The Relocation Checklist

The best advice to a parent wishing to relocate, is to set out your position carefully and clearly for the other parent. There is a relocation checklist that must be followed, to ensure that thought is given to all aspects of the move, and this usually takes the form of a statement within any proceedings. However, it is a good idea for the checklist to be set out voluntarily as early as possible, so the other parent knows the proposed move has been considered very carefully and thoroughly.

- **Relationship history** - The checklist begins with a full history of the parties' relationship.
- **Motivation** - Details about the motivation for the move should be given whether that be new employment, one parent returning to where they are from, or a new relationship for example.
- **Accommodation** - The parent seeking to move should then explain the proposed move, including practicalities such as where the parent and the children will live. Information should be provided about the cost of relocation, how this will be funded, and photographs shared of the proposed accommodation.
- **Education** - Research should be undertaken into schools and a description given of the new school selected. The parent seeking to relocate should explain why it is a suitable school for the children to attend, exhibit brochures, term dates, photographs and compare it to the children's current school. Ideally, they should visit the school and share any details about whether a place is available for the children.

- **Contact** - Crucially the parent seeking to relocate should come up with a robust plan to explain what will happen to the children's contact with the other parent following relocation and give detailed proposals for direct and indirect contact. They should set out how long travel will take, the cost of travel and ideally, offer to share the travel time and costs. They should also consider how their proposals compare to the current arrangements. It's a good idea to utilise the children's school holidays to allow blocks of time with the other parent, as they probably can't spend as much time together during term time.
- **Effect of refusal** - Finally, the parent seeking to relocate should set out what the effect of a refusal will be.

The manner in which proposals are raised has an enormous impact. If your proposal is well thought through, with lots of thought given to how the children will maintain a meaningful relationship with the parent staying behind, that parent is less likely to feel railroaded and may be more open to discussion.

The best outcome in a relocation scenario is that both parents work together, seeing things from each other's perspective for the benefit of the children, and reach a carefully considered agreement. If that is not the case, the parent wishing to relocate would have to make an application to Court for a Specific Issue Order to allow the move, and the other parent would have to resist it.

Relocation cases are difficult as they are generally a yes or no outcome, there is no middle ground. They are highly fact specific and will turn on their individual merits, but they will always come back to what is in the best interests of the children.



How we can help

We have extensive experience supporting clients on an international basis, and can provide you with the expertise and knowledge you need to protect your family and your assets in the event of a relationship breakdown.

Ensuring the best outcome if your personal circumstances change, requires an expert legal team to effectively navigate the complexities of international legal systems.

We can help you to make the right arrangements before you get married or enter into a civil partnership, or you can talk to us if your current relationship breaks down and you need guidance on your options. We can also help you through the intricacies of legal systems at home and abroad when children are involved.

Our team will be with you every step of the way, providing hands-on practical support to help protect what's important to you, when it matters most.



Meet the Team



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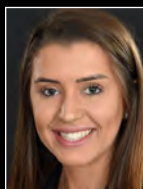
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