

INTERNATIONAL ENFORCEMENT AFTER BREXIT

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For those of us who have to enforce financial relief awards in other countries Brexit did, at least, simplify that process because the same rules now apply to most countries and the EU is no longer an exception. For, with the chiming of 11pm on 31 December 2020 the EU Maintenance regulation (Council Regulation (EC) No 4/2009) ceased to apply to new applications by or to the UK (though it continues to apply to apply to cases commenced on or prior to that witching hour).

In its stead, for all new cases involving EU countries we must currently use the Hague Convention of 23 November 2007 on the International Recovery of Child Support and other forms of Family Maintenance (the 2007 Hague Convention) to enforce court orders overseas, and that convention also applies to many other countries. In the future we may also have the benefit of membership of the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ('the Lugano Convention') but, though the UK has applied to join that convention, the EU Commission has said today that it is currently opposing that application. So it is currently far from clear whether we will be permitted to join it.

The 2007 Hague Convention entered into force in the UK on 1 January 2021. The EU is a party to the 2007 Hague Convention as a collective body, rather than its individual Member States. Those Member States derive their contracting status to the 2007 Hague Convention as members of the EU. It applies to all EU member states except Denmark. It is intended to provide a simple, quick and efficient system for the reciprocal enforcement of family maintenance between contracting states, including both spousal and child maintenance.

The Convention requires each contracting state to designate a central authority to discharge the duties that are imposed on it. In England & Wales the central authority is the Reciprocal Enforcement of Maintenance Orders (REMO) Unit of the Office of the Official Solicitor and Public Trustee). It is to that body that all applications for reciprocal enforcement must go and it is that body that seeks to enforce any applications for reciprocal enforcement from foreign jurisdictions.

A key difference from the EU Maintenance Regulation is that the 2007 Hague Convention does not contain jurisdictional rules for making maintenance decisions, or provide for what should happen in the event of parties seeking decisions in competing jurisdictions. Under the Maintenance Regulation the first application takes precedence (the *lis pendens* rule), so once proceedings are begun in one member country any competing proceedings in another member country have to be stayed. Under the 2007

Hague Convention, however, the *lis pendens* rule does not apply. As a result, it is possible for parties to pursue two sets of proceedings over the same issue in different jurisdictions. The issue of which jurisdiction should hear the application is decided, at least in the UK, under the *forum conveniens* rule i.e. which jurisdiction has the closest connection with the marriage and the parties' assets.

Not all jurisdictions operate that rule in the same way, and it is possible for two jurisdictions to take the view that they should deal with the application.

Of course, a properly drafted pre-nuptial agreement should deal with the issue of jurisdiction.

Once an order has been made in one jurisdiction it must be recognised under the 2007 Hague Convention (Article 20(1)) if:

- the respondent was habitually resident in the state of origin at the time the proceedings were instituted
- the respondent has submitted to the jurisdiction either expressly, or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity
- the creditor was habitually resident in the state of origin at the time proceedings were instituted
- the child for whom maintenance was ordered was habitually resident in the state of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that state, or has resided in that state and provided support for the child there
- except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties, or
- the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.

There are limited discretionary grounds for the refusal of recognition and enforcement of a decision.

An application under the 2007 Hague Convention, art 10 is made in a financial circumstances form, as annexed to the Convention at Annex F. In this country it must be sent to REMO which will then transmit it to the central authority for the reciprocating country. The application must be accompanied by any necessary supporting information or documentation, including documentation concerning the entitlement of the applicant to free legal assistance.

If all the documentation is in order and it does not refuse recognition, the central authority in the reciprocating country must then take steps to enforce the order. There is a duty on central authorities to process applications as quickly as proper consideration of the issues will allow, and to employ the most rapid and efficient means of communication at their disposal.