



Guide to International Divorce

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 **Goodwins**
FAMILY LAW SOLICITORS



Guide to International Divorce

Here at Goodwins Family Law, we are vastly experienced across all facets of family law, including the application of English and Welsh divorce law in international divorce. In order to help you gain an understanding of the various parts of international divorce, we've created this guide.

Goodwins Family Law are experts in all aspects of international divorce, having provided our expertise for clients around the world. For more information about the work we do, please feel free to get in touch today. We have a Skype contact service for discreet correspondence from anywhere in the world.



When Is A Divorce Considered 'International'?

A divorce takes on an international element when the couple involved have connections with more than one country. This can often add an extra layer of complexity to the process compared to a purely domestic divorce within England and Wales. Even within the UK, countries have different divorce laws meaning that a divorce between Scotland and England/ Wales can be classed as 'international'.

There are two criteria that determine whether or not you can get divorced in another country. They are known as Habitual Residency and Domicile. Let's look at them in more detail:

Domicile

This is where your permanent home is. You can get divorced in any country where your permanent home is located. An adult can only have one domicile at a time, though - a domicile of origin or a domicile of choice. The former is the country you were born in and therefore automatically acquire as domicile, but the latter is one you have chosen to move to.



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Habitual Residency

This essentially means a place where you live regularly. You must prove habitual residence by showing you are either settled in the country or you are planning to stay there for an extended period of time.

Factors that are considered when deciding how to show your proof of domicile and habitual residence include:

- Where you usually work, live, study or relax
- Whether any move to another country is temporary
- Where your car is registered
- Where your mail is delivered
- Where you have property, including rented out property
- Where your mobile phone is registered
- Where your financial arrangements are based, such as bank accounts and where you pay tax
- Your nationality





Selecting An International Divorce Solicitor

Choosing the right solicitor for your divorce process is imperative - they will be a crucial source of support and advice throughout the entire process, which will be invaluable and is the best way of ensuring a satisfactory outcome. Although legal advice can be expensive, the financial losses you may suffer from divorcing without the advice of a qualified solicitor can be far greater than the money expended on legal advice.

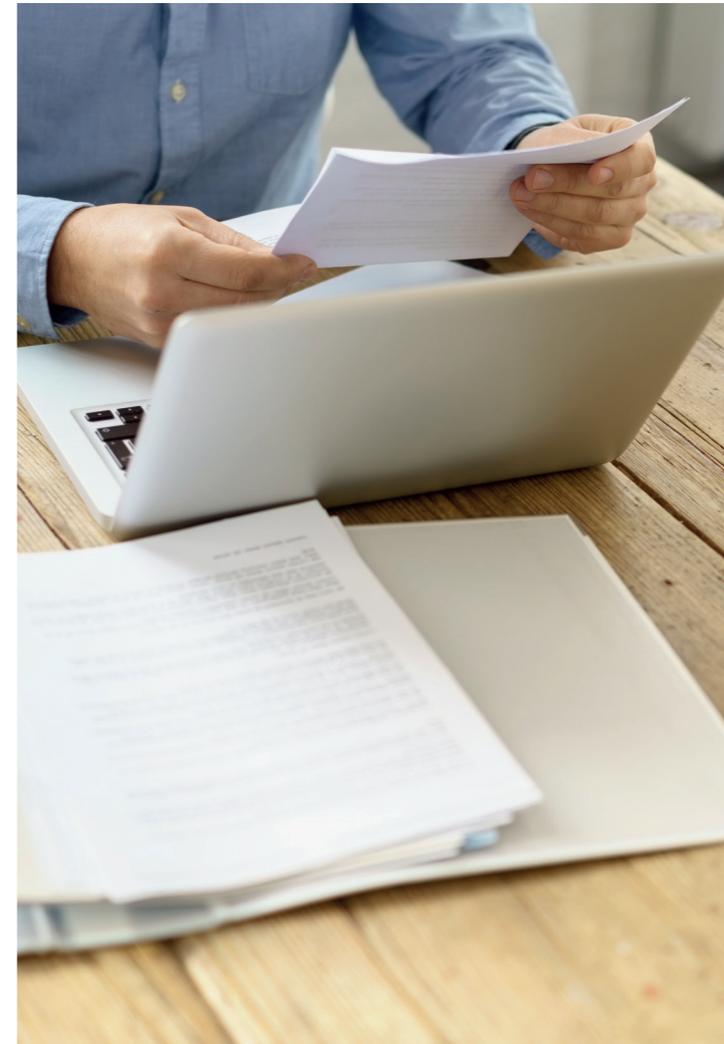
Goodwins Family Law Solicitors are experts in international divorce law involving England and Wales. We always recommend that you seek the advice of a local solicitor in the other countries involved. This is so you get the most comprehensive picture of the law in all countries and what outcome you can expect there before making a decision on where to petition.

We offer a Skype call service, too, so you can contact us discreetly from anywhere in the world. Most reputable international divorce solicitors will offer this service or similar to ensure ease of communication with clients worldwide.

Equally important as getting in touch with a solicitor is doing so as quickly as possible. We will cover this in further detail later in this guide.



Initial Considerations When Getting An International Divorce



There is a lot of planning required for a divorce, whether international or domestic, and it's important that you have taken everything into consideration before you embark on the process.

Speed

Speed is highly important during an international divorce and failure to act quickly in the initial stages can have ramifications on the outcome of the divorce. This is fundamental for divorces between EU countries, where proceedings will be held in the jurisdiction that receives the petition first, regardless of which country has the closest connection. If you are planning to get divorced and you have a country in mind that you want and are able to get divorced in, it's important that you seek advice quickly.

Potential outcome

You should have an idea of the outcome that you would like from the divorce, but remember to be realistic about it. Different jurisdictions have different rules and processes for determining the outcomes of divorces. Your solicitor will be able to advise you on this information and where is it best for you to divorce to receive a favourable outcome.

Gather your documentation

Being fully prepared for your case is crucial. Gather all relevant documentation - consult with your solicitor about what is required, as it is almost certain that your spouse will be fully prepared, too.



Deciding Where To Get Divorced

Why does it matter where my divorce takes place?

The outcomes of divorce can vary massively between countries, which is why it's important to petition first in the country where the outcome is most favourable for you.

It's important to consider that you will need to fulfil the criteria required by each country to divorce there. In most cases, these criterias are dominated by domicile and habitual residence. English family law can in fact be used overseas, however there is no guarantee that the same outcome would be reached in an English court. Your international divorce solicitor will be able to advise you on this.

Factors affecting where the divorce takes place

There are a number of factors that can influence the country in which a divorce will take place.

Domicile and habitual residence

as we have detailed earlier in this guide, domicile and habitual residence concern the countries you call home - the ones you have lived in, or plan to live in, permanently.

Child custody

In divorce disputes where children are involved, the courts will always put the needs and happiness of the children before anything else. This can be a crucial factor in deciding where the divorce is held.

Finances and assets

Financial outcomes can differ greatly from country to country. Any assets you have that are held in England/ Wales or abroad can have a bearing on whether or not it would be beneficial for you to divorce here or overseas. For example, if you have a pension abroad, your solicitor may decide it is best to divorce in the country in which it is held in order to protect it. Read more about finances in international divorce on page 12.

Prenuptials

If you signed a prenuptial agreement before you got married, said agreement might contain clauses that can have a deciding effect on where your divorce takes place.

Procedure

The divorce process can vary across different jurisdictions, and different countries accept varying criteria for divorce. Consult with your solicitor to find out whether or not it is viable to get divorced in your chosen country.

Speed

The speed at which you petition for divorce will have a huge impact on where the divorce process is recognised and held. Usually, the divorce is held in the country of whoever petitions first.

Religion

In certain countries, only specific types of divorce are recognised, in accordance with certain religions. For example, traditional Islamic Law requires a Talaq divorce, and if certain criteria are met when divorcing in the overseas country, it will be recognised in the UK. However, if a Talaq divorce takes place in the UK, it will not be recognised.

Attitudes and law towards women

The law in certain countries does not consider men and women equal when it comes to divorce. This could either be advantageous or negatively impact your settlement depending on your gender. Your solicitor will be able to advise you on this.

Where international divorce is concerned, there are three categories that it can fall into:

Divorce within UK countries

Divorce within EU countries

Divorce involving England/Wales and a non-EU country

Divorce In England and Wales

You can start the divorce process in England or Wales if you and your partner meet any of these criteria:

- You and your partner are residents of England or Wales
- The respondent to the divorce is habitually resident in England or Wales at the beginning of proceedings
- The petitioner has been resident in England or Wales for at least 12 months prior to the beginning of proceedings
- You and your partner are domiciled in England or Wales when proceedings start

It is important to note, too, that English law can be used overseas, however it may not have the same outcome that you would get for the same case in England.

Divorce Within The UK

The UK does not have one blanket divorce law that covers each of its individual countries. England and Wales share the same divorce law, but Scotland and Northern Ireland have their own. For example, in Scotland, the period of separation required for divorce is shorter, and you can get divorced within the first year of marriage in the case of 'irretrievable breakdown'. In Northern Ireland, a couple may not apply for divorce within the first two years of marriage.

It is normally the case that an English couple living in England can only be divorced under English Law, and that a Scottish couple in Scotland can only divorce under Scottish Law. However, there is scope for couples who split their time between Scotland and England to get divorced under either law, but consult with a solicitor first before proceeding.

Divorce In European Countries

For divorce inside the European Union, each country has specific requirements couples must meet to be eligible to divorce there. Usually, such criterion includes that you or your spouse must either be nationals of the country you are applying for divorce in, or habitually resident of the country you are applying for a divorce in.

Introduced in March 2001, Brussels II is an important regulation concerning international divorce in Europe. It states, among other things, that a divorce in one member state is recognised in another member state, that judgements pronounced in one member state should be recognised in another, and that divorce certificates should not be appealed, except in the event of material error. Brexit may change certain aspects for UK citizens, but until that process is finalised, it remains a key regulation.

As part of the Brussels II law, usually the country that receives the divorce petition first is where the divorce proceedings will take place, even though another country may have a closer connection. Financial settlements in Europe can also be significantly different in each country. We would always advise discussing your options with your spouse if possible to avoid any surprises. However, if this is not possible, speed is absolutely crucial when seeking advice and applying for divorce to ensure you are in advantageous position.

Example 1

Person A and Person B got married in France, where they both lived and worked. Upon splitting up, Person A, an English national wished to move back to England, and Person B, a French national, moved to Italy. Person B can apply for divorce in Italy once they have lived there for a year. Person A can start divorce proceedings in England once he has lived there for six months.

Example 2

Person A and Person B got married in England. Person A, who is a British national, stayed in England, but Person B moved to Cyprus. Person A wants to apply for divorce. They could get divorced in England because both it is the last place Person A and Person B were habitually resident, and Person A still lives there.

Divorce Involving England/ Wales And A Non-EU Country

If your international divorce involves England and Wales and a country outside of the EU, speed it still highly important to ensure you determine where it is most advantageous for your divorce to take place.

If your spouse chooses to petition for divorce in a different country to yourself, your spouse can reject your petition if they have the grounds to do so. Your solicitor will advise you on whether this is possible. In this situation, the courts will then have to decide which country is more appropriate to deal with the proceedings. This is usually decided based on which country has the closest connection to you and your family.

The legal term for the courts deciding whether your connection to a country is strong enough is a "forum dispute". Please be aware that these disputes can be protracted and costly, so seek advice from a qualified family law solicitor before proceeding. Your solicitor will advise on where it would be financially beneficial to petition out of the countries you are eligible to get divorced in.





International Divorce Financial Settlements

The financial outcomes of divorce can vary massively from country to country. So much so, that you should seek professional advice on the type of financial settlement you can expect from the divorce, before you petition for it.

England and Wales use a selection of clearly-defined criteria to determine the allocation of finances and assets after a divorce. They are:

- **The financial needs of any children and their well-being**
- **The financial needs of both parties**
- **Any potential for future income for both parties**
- **The current income of both parties**
- **Any assets of significant worth - properties, pensions, vehicles, etc.**
- **The financial contribution of each party during the marriage**
- **Non-financial contributions, such as sacrificing career to raise children**



The courts' aim is to share out any assets and finances in a way that is fair to both parties, but the above criteria will have a significant impact on their decision.

The standard of living that both parties experienced during the marriage is taken into account as well. Things like: how many cars were owned, what kind of school did the children go to and how many holidays did the family go on?

It's important to remember that although the courts aim to split things fairly, that does not always mean things will be shared out equally. For example, in a short marriage, where one party has earned considerably more money than the other, the spouse who earned less will be entitled to less in any financial agreement.



International Divorce & Child Custody

Child custody disputes can be difficult and stressful in any case, and when there's an international element involved, that difficulty can be multiplied.

Taking children abroad under English and Welsh divorce law

When a spouse is granted main custody of a child or children, they may want to take them abroad to live, or for a holiday. In the case of the latter, the spouse with custody is allowed to take the children to a different country for less than a month without needing permission from the other parent. If they want to take the children abroad permanently, a Leave to Remove application comes into play.

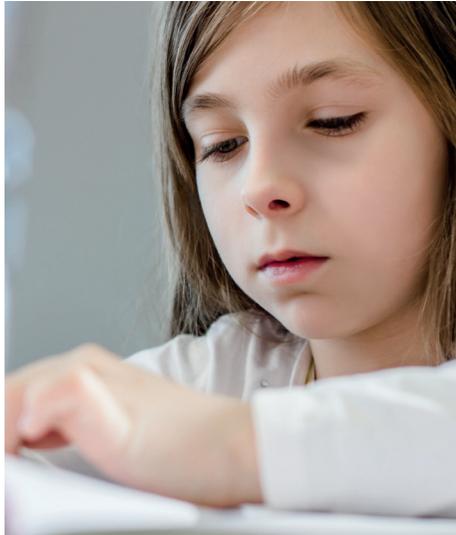
Leave to Remove applications are when the parent or main carer of a child requests the court's permission to leave that particular court's jurisdiction with their child or children on a permanent basis. These applications are often used when parents cannot agree on whether or not the children should be taken abroad, and a court will make the decision.

With regards to a parent in a foreign country wanting to relocate with children to the UK, that is often illegal without the permission of the other parent. The court must give their permission, too, but again, the main concern is the welfare and happiness of any children concerned.

Any case involving the custody of children can be extremely stressful and emotional for the parents or main carers involved. Because of the high emotional effects of any court decision regarding the custody/location of children, these cases can become protracted and fractious, which is why professional legal assistance and advice is crucial.



Child Abduction In International Divorce



In some child custody disputes, one parent may go so far as to abduct their children to take them to a different country without the permission of the courts or the other parent. This is a criminal offence, also sometimes referred to as 'wrongful removal'.

If a child has been taken abroad and not returned to the other parent within an agreed time, this is known as 'wrongful retention'.

The Hague Abduction Convention was brought into effect in December 1983, designed to provide a way of expediting the return of children who have been wrongfully removed or retained to their main parent or carer. The convention applies to children under the age of 16, and its aim is to prevent the person removing the child crossing international boundaries with the hope of finding a more favourable ruling from a different jurisdiction.

If child abduction takes place with your children, it is absolutely imperative that you contact experienced and qualified international divorce lawyers as a matter of urgency.

How does this affect my divorce?

During an international divorce, you can't simply leave a country with your child for more than a month without the other parent's permission, it is a criminal offence. However, if you are in an unsafe situation or in immediate danger, it is advised you seek assistance by contacting an international divorce solicitor as quickly as possible.

Equally, if child abduction takes place with your children, it is absolutely imperative that you contact experienced and qualified lawyers as a matter of urgency.



Frequently Asked Questions

I married abroad, will I need to get my marriage certificate translated?

If your marriage certificate is in a foreign language, you may need to have it translated into English. An experienced solicitor will be able to take care of this. Your certificate can then be served along with your divorce petition.

Will other countries take our prenuptial agreement into consideration?

Although prenuptial agreements are becoming more and more common around the world, whether or not they are considered or accepted varies between jurisdictions. If you have a prenuptial agreement in place, do not assume that the country you are petitioning for divorce in will accept or acknowledge it. Contact a qualified, experienced international divorce solicitor to obtain more information about the validity of your prenuptial agreement in certain countries.

Is my international marriage recognised in the UK?

International marriages are usually accepted and valid in the UK, providing that the following criteria have been met:

- You both had the capacity (age, marital status and consent) to marry in accordance with the law of your domicile (or the law of your country, if you are not a native of England, Wales or Ireland)
- The ceremony of your marriage took place in compliance with the law of the country in which you were married

For more information about whether or not your marriage is recognised in the UK, contact an expert divorce solicitor for advice.

Visit our website for further International Divorce FAQs.

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