



BREXIT – IMPACT OF A “NO DEAL” ON ENGLISH DISPUTES WITH EU COUNTER-PARTIES

In preparation for what many now see as being the most likely outcome, the UK Government (Government) has published its guidance on how disputes will be dealt with in the event of the UK exiting the EU without it first having agreed a framework with the EU for ongoing civil judicial cooperation.

If the UK exits Brexit on a “no deal” basis, from 11pm on 29 March 2019 the transition arrangements keeping the status quo until at least the end of December 2020 will not apply.

“Where proceedings have already commenced, parties should ensure that they serve proceedings as soon as possible to make use of the service conventions.”

The Government's guidance is entitled: *Handling civil legal cases that involve EU countries if there's no Brexit deal* and is available at <https://www.gov.uk/government/publications/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexite-deal/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexite-deal>. The guidance and its implications for EU parties engaging in disputes, or for those considering using an English law and jurisdiction clause are the subject of this briefing note, which is an update to our Brexit Disputes Considerations article, available at: <http://www.hfw.com/downloads/HFW-Brexit-Considerations-Dispute-Resolution-Feb-2018.pdf>.

What does a “no deal” Brexit mean for disputes?

It should be remembered that Brexit will only affect those suing under an English law and jurisdiction clause involving parties based in the EU, or with attachable assets in the EU. It will therefore only impact upon a small percentage of the disputes involving the English courts, and (for the reasons given below) will not impact at all on parties who have elected to resolve their disputes via arbitration.

As discussed in our Brexit Disputes Considerations, choice of jurisdiction, service, and enforcement are likely

to be most affected by Brexit, this is because of the number of reciprocal conventions and regulations the UK (and therefore England and Wales) have in place with the EU.

In the guidance paper the Government makes clear that it will “repeal most of the existing civil judicial cooperation rules and instead use the domestic rules which each UK legal system currently applies in relation to non-EU countries, [and] would retain elements of the current EU rules, where they either do not rely on reciprocity to operate or where they currently form the basis for [the UK's] existing domestic or international rules.”

Why might arbitration be the answer?

Arbitration is likely to be a preferred choice for many as the New York Convention 1958, to which over 150 countries are signatories (including the EU member states), provides for an agreed process for enforcement of convention country arbitration awards, thereby eliminating the potential service and enforcement issues which may be encountered post-Brexit.

HFW's Perspective

It still remains unclear as to whether an exit deal will be agreed between the UK and the EU. However, parties wishing to include an English choice of law and jurisdiction clause and

who are engaged in pre-contract negotiations would be well advised to consider whether arbitration should be the preferred method of dispute resolution, and should include a clause enabling the choice of jurisdiction to be reviewed post-Brexit.

Parties who are now engaged in a dispute would be well advised to seek to agree resolution via arbitration, if at all possible; or to commence proceedings before 29 March 2019, thereby helping to secure the benefit of the service conventions and regulations. This may mean negotiating a variation of what was previously agreed.

Where proceedings have already commenced, parties should ensure that they serve proceedings as soon as possible to make use of the service conventions. If further along the process, they should seek judgment as soon as possible and pre- 29 March 2019, to make use of the judgment enforcement conventions.

Regardless of what the future holds for individual conventions and regulations, English law and jurisdiction will continue to remain a significant choice for many engaging in disputes.

For more information on Brexit go to www.hfw.com/Brexit.

Table of the key conventions and regulations applicable to inter-EU disputes and the impact in the UK of a “no deal”.

UK/EU REGULATIONS AND CONVENTIONS	BEFORE BREXIT	IN THE EVENT OF A “NO DEAL”	IMPACT
Rome I Regulation (EC 593/2008)	Convention enabling parties to elect their chosen choice of law relating to contractual obligations.	Will be retained by the UK	No change. Parties may continue to elect the law governing their contractual disputes.
Rome II Regulation (EC 864/2007)	Convention enabling parties to elect their chosen choice of law relating to non - contractual obligations.	Will be retained by the UK	No change. Parties may continue to elect the law governing their non – contractual disputes
Recast Brussels Regulation 1215/2012 (the Judgments Regulation)	Reciprocal Regulation to 1) decide where a case should be heard when it raises cross-border issues between the UK and other EU countries, and 2) enables the recognition and enforcement of civil and commercial judgments between EU countries.	Will be repealed by the UK. Yet to be agreed, but likely that it will continue apply to judgments given pre- 29 March 2019.	In the absence of Recast Brussels, the common law rules on enforcement of judgments will apply. Parties will need to sue on the judgment, which will form part of the claim evidence, as is the case with English judgments in e.g. the U.S.
Lugano Convention 2007	Convention governing jurisdiction and enforcement of judgments between the UK (including England and Wales), and Iceland, Norway and Switzerland.	Will no longer apply to the UK (including England and Wales). The Government has indicated that it will seek to agree a similar convention with these countries- from 1 April 2019.	The common law rules on enforcement of judgments will apply. Parties will need to sue on the judgment, which will form part of the claim evidence, as is the case with English judgments in e.g. the U.S.
2005 Hague Convention on Choice of Court Agreements	Convention giving effect to an exclusive choice of a convention court. Signatories are growing in number and include the EU member states, Singapore, and Mexico.	Will no longer apply to the UK (including England and Wales). The guidance paper states that the Government will ratify the Convention on behalf of the UK- from 1 April 2019.	This is seen as a possible replacement to the Recast Brussels. However, it is narrower in scope (e.g. it does not apply to carriage of goods contracts), and it is unclear whether it would apply to jurisdiction clauses pre-dating 29 March 2019.

Should you have any queries, please do not hesitate to contact the HFW Brexit Group at the author of this briefing.



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