



NEW YEAR, NEW DAWN FOR ENGLISH/EU DISPUTES: WHAT DOES THIS MEAN FOR YOU?

After the year we have all had, it is probably true to say that most, if not all of us, will be pleased to welcome in 2021. However, with it comes the end of the Brexit Transition period, and consequently the end of various UK/EU jurisdiction, service, and enforcement provisions that have been in place for several years.

In this briefing we summarise what the apparent end of the Transition period means for the English /EU litigation landscape.

From 1 January 2021 the UK (for the purposes of this briefing, we reference the law as it applies to England and Wales) will no longer be able to rely on the various EU conventions on jurisdiction, service, and enforcement. Therefore businesses need to understand how the new post-Brexit regimes will impact on disputes, and dispute resolution clauses.

What are the changes on and from 1 January 2021?

Governing Law

The position remains as is the case now. Rome I and Rome II will continue to remain in force and so parties can be assured that English governing law clauses will be respected for contract and tort claims.

Jurisdiction (incl service and enforcement)

New regime:

- 2005 Hague Convention on Choice of Court Agreements, to which the EU is a party and its service and enforcement provisions will apply to certain contracts containing an exclusive jurisdiction clause (notable exceptions include carriage of goods contracts, and certain insurance contracts, as well as consumer contracts). There is a conflict between the UK and the EU on when the 2005 Hague Convention will apply: the UK considers it to apply from the date it joined as part of its EU membership ie 1 October 2015, the EU's view is that the relevant date is the date on which the UK becomes a party in its own right ie 1 January 2021. It is likely that the position will not be clear until there is a judgment deciding the matter.
- Where the 2005 Hague Convention does not apply, the English courts can order leave for service out of the jurisdiction on parties in the EU under common law rules (as is currently the case for service on many non-EU jurisdictions).
- English courts will no longer be bound by changes in EU law after 1 January 2021, but may give it consideration.

- Following the end of the Recast Brussels regime, anti-suit injunctions will once again be possible in English/EU disputes- therefore the English courts will be able to order an injunction preventing foreign court proceedings in breach of an arbitration agreement.

Out:

- the Recast Brussels jurisdiction regulation will no longer apply to claims, unless they were issued on or before 31 December 2020
- the 2007 Lugano Convention will no longer apply to claims, unless they were issued on or before 31 December 2020. The UK is seeking to join the Lugano Convention in its own right, but this requires the consent of the EU member states, which if given will be followed by a three month period before it comes into force.
- The EU Service Regulation will not apply.

Arbitration

Arbitration is not affected by Brexit, and parties can therefore arbitrate and include arbitration as their preferred methods of dispute resolution in the knowledge that it will be respected and that service and enforcement under the New York Convention 1958 will continue as is the case now.

HFW Comment

In our view English law and jurisdiction continue to remain attractive to parties wishing to resolve disputes via litigation. The effect of Brexit is limited to claims involving parties or assets in the EU, in which case our recommendation is to try and agree an arbitration clause as arbitration is not (as discussed above) affected by Brexit.

HFW Brexit Team

Our dedicated Brexit team is here and ready to help with these, or any questions you may have. Our team crosses Disputes and Transactional practice areas, and includes experts in each of our sector groups, including: Aviation, Commodities, Construction, Energy, Insurance and Reinsurance, and Shipping, each

of whom are on hand to advise you on Brexit issues and help to provide clarity around the legal and strategic implications for your business.

Our Brexit resources, including guidance and publications are available on our dedicated Brexit page.¹

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