

Have you been divorced abroad? English Financial Settlements after a Foreign Divorce

Summary

Even though there has been a divorce abroad the English Family Court has discretion to make a financial order against a former husband or wife. This can overcome financial hardship when the divorce courts of the other country made an inadequate financial settlement.

Background

In the 1970s and early 1980s, as the amount of international travel increased, the English family courts were placed in a difficult situation.- If they recognised a foreign divorce they effectively closed the door altogether to any further opportunity for the English courts to grant financial orders to deserving spouses with English connections.

Four decades or so ago, financial settlements for women on divorce in many countries was inadequate, and much worse than today.

For this reason, there was a lot of forum shopping and litigation to show certain foreign divorces, for example Islamic divorces, were not entitled to be recognised as valid divorces. If the divorce abroad was recognised, it was the end of any opportunity for the English courts to grant financial settlements on the end of the marriage.- It was all unpleasant, costly, often unjust and rarely produced an overall fair outcome.

Part III Matrimonial and Family Proceedings Act 1984

This law was introduced to overcome this problem.-

It enables a party, following a foreign divorce, to apply to the English court for a financial settlement. The parties must have sufficient connecton to England as follows:

- Either is domiciled in England and Wales at the time of the foreign divorce or at the time of the application or
- Either has been habitually resident in England and Wales for 12 months at the time of the foreign divorce or at the time of the application or

- One party has an interest in a dwelling house in England and Wales which had been a matrimonial home (when claims are limited to the value of the house).
- Other narrow criteria following recent EU legislation.

iFLG can advise you whether you satisfy the necessary connection criteria to bring an application.

Making an Application

Permission of the court is needed for such an application which is only granted if the court considers that there are substantial grounds for making the application for an order. It is a type of filter mechanism. The court will consider whether it is appropriate for an order to be made. This is not a definitive list but the sorts of things that the court will take into account are:

- The connection which the parties to the marriage have to England and Wales
- The connection that the parties have with the country where the marriage was dissolved, annulled or where they were legally separated
- The connection with any other country
- The financial benefit the applicant, or a child of the family has received, or is likely to receive pursuant to the divorce in the other country.
- The extent to which any foreign order has been complied with.
- The length of time since the divorce, annulment or separation.-

When will a court make an order?

The leading authority is the case of *Agbaje v Akinnoye-Agbaje* which was decided by the Supreme Court in March 2010 which said that purpose of Part III was “the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court in a situation where there were substantial connections with England”.

What orders can the court make?

The court is able to make similar orders to those on English divorce, although whether they do so will depend on the overall circumstances of the case.

The types of remedies available are:

- Orders for lump sum payments
- Orders for the sale or transfer of properties
- Orders for the payment of maintenance for the benefit of one of the parties for a defined term, or for an indefinite period
- Orders for the payment of maintenance for the benefit of the children

- Pension sharing orders -

When deciding what, if any, order to make, the Supreme Court said certain principles should be applied. These are:

- The primary consideration must be the welfare of any children of the marriage.
- It will never be appropriate to make an order which gives the Applicant more than he/she would have been awarded if the divorce had taken place in England.
- Any order should provide for the reasonable needs of each spouse.

Subject to these principles, the court has wide discretion and flexibility to make an order.

The scope and amount of the order may depend on the level of connection to England. The Supreme Court stated that where the English connections are very strong, there may be no reason why the application should not be treated though the divorce took place in England. However, where the connection is not strong and a spouse has received provision from the foreign court- it will not be appropriate for Part III to be used simply as a tool to top up that provision to that which he would have received in an English divorce and may receive only a “needs” based outcome.

For more information about applications under Part III please contact us by clicking here ^[2].

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