The EU does not have legal powers to change the substance of domestic family law but it has enacted procedural rules that ensure that family-related decisions made in the UK can be automatically recognized and enforced in other countries of the EU. These rules achieve a level of certainty for families who move between different countries of the EU and prevents parents from avoiding their obligations by moving to different countries.

EU law also ensures that public law decisions to protect children can be enforced in countries of which the child is a non-national.

One advantage of EU law is having uniform rules across Member States for family law proceedings, including cases on living arrangements for children.

EU Regulation 2201/2003 (Brussels II bis) ensures that official decisions affecting children (contact or residence) are automatically recognised and enforced in other Member States. If a parent takes a child abroad without the consent of the other parent, for example, the ‘left behind’ parent can quickly ensure judgments of UK courts are enforced in other EU countries.

This law places particular emphasis on upholding the best interests of children. It also states that decisions will only be recognised and enforced if the child who is deemed to have capacity has been given the opportunity to be heard. Plans are currently underway to amend this law which will further strengthen the rights of children in international family proceedings.

In the same way, the EU Maintenance Regulation provides that arrangements for child maintenance will be automatically applicable in any other Member State to which either of the parents and/or child move.

Alternative Private International Law Rules?

There are other non-EU international instruments which could apply to the UK after Brexit (which currently apply to non-EU countries). The 1980 Hague Convention on Child Abduction, for example, applies in cases where a parent un lawfully takes a child abroad.

A less likely option would be for the UK to create bilateral agreements on family law with other countries, mirroring current EU legislation, but this would take much time and effort.

While it is by no means perfect, evidence shows that EU law in this area is quicker and easier and that it places more emphasis on children’s rights. For example, the Brussels II Regulation imposes a six week deadline when dealing with claims of child abduction, meaning an abduction case are resolved more quickly and at less expense than non-EU proceedings.

The Brexit negotiations in relation to EU family law should:

- Retain a firm focus on the primacy of children’s best interests and right to be heard;
- Retain a 6 week deadline for the disposal of cases involving child abduction;
- Maintain UK membership of the European Judicial Network to facilitate information sharing between the courts dealing with family issues.

Sources

For more detailed explanation of the EU legal framework as it affects children:

International Family Law Group

Bar Council for England and Wales – Position Paper ‘Reform or withdrawal: Rights and justice’

Blogs

International Family Law Group
Kingsley Napley EU referendum - implications for international families and family laws if the UK leaves the EU