

LIFETIMES

Spring issue 2021

- **The dangers of joint property** - the implications for your will
- **Business interruption insurance** - holiday let help
- **Surrogacy** - another route to parenthood
- **Brexit and divorce** - new legislation and your rights

Welcome



Victoria Tester
Managing Director – Life and
Business

This month marks a year since the UK first went into a national lockdown, none of us knew a year ago the devastating impact COVID would have on us and our loved ones.

This past year has triggered a host of complexities that many of us would never have guessed we'd be faced with in our lifetime. It has taken bravery, compassion, and an unrelenting focus so far, and no doubt will require a whole host more over the coming months. As we gradually start to make our way out of lockdown once again, by supporting each other in life and in business, we can make way for a brighter future.

From considering how joint assets are held in a will, to the impact Brexit may have on the divorce process and children law, we bring you a round-up of insightful and informative content to help you navigate the opportunities and challenges you may currently be facing.

contents

We hope you find it useful and informative and please do contact us for further advice on issues discussed here or anything else affecting you now and into the future.

The dangers of joint property

“How is your joint property held”? is a question we ask every client undertaking estate planning or making a will. The answer can potentially have very significant consequences, particularly where the family home is the main asset.

For some, the ability to hold property as either joint tenants or tenants in common may be very familiar concepts. For others, the decision of how to hold the family home has often been made many years ago or was not something ever actively considered.

Other clients have undertaken estate planning many years ago, which resulted in their property being held as tenants in common. However, when the couple have moved, the new property has inadvertently been purchased as joint tenants, potentially undermining any estate planning they have put in place.

Where property is held as joint tenants, on the death of one owner, the property passes automatically to the other, regardless of the provisions of that person's will.



But in contrast, where property is held as tenants in common, when one person dies, the share belonging to them passes in accordance with the terms of their will.

Many family homes are held as joint tenants, as this is often seen as the “default” for married couples and although this may work well for many people, it is not always the best option.

Considerations for the future

Consider a second marriage, where the first to die wishes to protect their share of the property for the children of previous relationships. If the home is held as joint tenants, the surviving spouse has complete control after the first death – they could give the property away or they could leave it in their will to their own children or to a new spouse if they remarry. If they die without a will, the laws of intestacy will decide who will inherit this on their death and this will not include step-children.

The possible unintended consequences of holding a property as joint tenants are clearly demonstrated by a recent case where a married couple were both found dead at their home. It was unclear who had died first and each had a daughter from a previous relationship.

The couple held their home (and their bank account) as joint tenants, meaning that whoever died second would inherit the other's share.

Where it cannot be determined who has died first, the law considers this to have been the older person, in this case the husband. As a result of this, the wife was deemed to hold all the assets at her death and her daughter inherited everything. The husband's daughter inherited nothing. Had the property been held as tenants in common instead, each daughter would have received half.



How it affects estate planning

Holding property as tenants in common can also sometimes be useful even where the ultimate intended beneficiaries are the same for each joint owner.

Many people choose to include Nil Rate Band Trusts in their wills on the first death, not least because this allows up to £325,000 to be held outside the estate of the survivor, providing protection of this sum from care fees. If the main asset is the family home, it is often necessary to ensure that the share belonging to the first to die passes under their will in order to have enough value to make full use of this trust. This will not happen where property is held as joint tenants.

These are the key features of joint tenants vs tenants in common but whether they are pros or

cons can be subjective and frequently depends on individual circumstances. It's important to obtain legal advice before committing to one option over another so that you know that you're making the right choice for you and your family.

[Read more about the importance of preparing a will.](#)

For more information please speak to Victoria Taylor or a member of the private client team.



Victoria Taylor
Solicitor

victoria.taylor@shma.co.uk
+44 (0)121 214 1229

Protecting your gifts

Gifts to a loved one is often undertaken on the usual customary occasions such as birthdays and Christmas, or often to help adult children get a foot on the property ladder, or even perhaps as a result of tax planning advice.

However the current COVID-19 pandemic has given many people another reason to consider gifting. It may be that a loved one has been furloughed, lost their job or is at risk at losing their job and a financial gift would ease their money worries.

So what are the current allowances and exemptions available in these circumstances?

1. Annual Gifts Exemption

An individual can make gifts of up to £3,000 per annum free of inheritance tax. If the annual exemption is unused or partially unused in one year the unused amount can be carried forward to the next year, so there may be a maximum annual gifts exemption available in one year of £6,000.

2. Small Gifts Exemption

Gifts of up to £250 can be made to any number of individuals free of inheritance tax providing that the recipients of any £250 gifts are different to the recipients to any part of a gift forming part of your £3,000 annual exemption.

3. Gifts in consideration of marriage or civil partnership

Gifts in consideration of marriage or civil partnership are free of inheritance tax subject to the following limits: £5,000 if you're a parent, £2,500 if you're a grandparent and £1,000 in any other case.

4. Gifts out of income

Regular gifts can be free of inheritance tax provided that such gifts are made from surplus income, and provided that a pattern of giving is demonstrated which leaves the donor with sufficient income after making the gifts to maintain a usual standard of living.

5. Gifts in excess of these limits

If an outright gift is made to an individual during their lifetime in excess of the limits above, no inheritance tax is payable when that gift is made. The gift is a potentially exempt transfer. This means that if the donor of the gift dies within seven years of making the gift, the value of the gift is brought back into account when calculating any inheritance tax payable on the donor's death.

If the gift is a lifetime chargeable transfer (e.g. a gift into trust as opposed to an outright gift), it may be chargeable immediately to inheritance

tax at 20% to the extent that the value of the gift exceeds the nil rate band (currently £325,000). If the donor dies within seven years of making the gift, the value of the gift will be brought back into account on the donor's death and inheritance tax may be payable at 40% (with credit being given for the 20% already paid).

6. Gifts of Business Property, Agricultural Property and/or Heritage Property

Gifts of such property may be exempt from inheritance tax providing that certain conditions are met. It is recommended that you obtain specific advice if you are contemplating making any such gifts.



Protecting your gifts

Parents often want to help their children out financially and often this assistance is provided to children who are living with a partner, in a civil partnership or who are married. But what happens, if things don't go to plan and they separate and /or divorce?

If you have chosen to make an unconditional gift to your son or daughter, perhaps jointly with their partner or spouse, if the partnership or marriage breaks down then as the donor

of the gift, it is not possible to claim that gift back, unless your son or daughter's partner agrees.

However, a gift can be protected if recorded in a co-habitation agreement (commonly called a **living together agreement**) or a post nuptial agreement between your child and their partner /spouse. This written legal agreement would determine how the gift and any subsequent gifts are to be treated on a divorce.

There is however, no one size fits all and the shape and scale of these agreements will depend on an individual's circumstances so it really important to chat your requirements through with an experienced lawyer who can advise on the best route forward.

For further information on planning for the future please contact Kathleen Ryan or another member of the private client team.



Kathleen Ryan
Solicitor

kathleen.ryan@shma.co.uk
+44 (0)121 214 0102



Surrogacy: another route to parenthood

Starting a family is a big decision. Surrogacy is often thought of as a choice only available to wealthy individuals and yet in stark contrast to other countries, such as the USA, commercial surrogacy is illegal in the UK and must be managed privately by the couples and individuals concerned.

It's a big decision

There are specialist groups out there which do provide support, advice and networking opportunities for prospective parents looking to navigate this route.

After matching with a surrogate, transparent and frank communication is the cornerstone of any arrangement and ensures that all parties are on the same page. From discussing the type of birth to the kind of surrogacy, fostering strong relationships is crucial in the short and long term.

The legal background

Although surrogacy is often seen as an altruistic act, intended parents still need to consider the legal challenges which can arise when choosing this route to start a family. It is important a surrogacy agreement is prepared to document all the aspects the intended parents and surrogate have agreed upon. As with everything on the path to surrogacy, the parents and surrogate must be in constant and precise alignment. If the help of a surrogacy organisation, such as Surrogacy UK, has been enlisted, they will usually be on hand to offer help and guidance. Leading up to the birth, it's

essential wider issues including wills and life insurance that should be considered. Practically, it's essential for intended parents and their surrogate to discuss birth plans and surrogacy policies with the hospital, doula, or midwife.

Post-birth

Following the birth, the intended parents can apply for a parental order. This is a bespoke order, specific to surrogacy, and has the effect of transferring the surrogate's parental rights (and if they are married, their spouses') to the new legal parents.

The process is similar to many other legal processes in that the intended parents will need to make a formal application to court. The intended parents must meet several specific criteria if they are to succeed in their application, which range from, one of the parents having a genetic connection with the baby, through to evidencing the surrogate's consent to the application, and the application being made within six months of the birth of the baby. Despite there occasionally being unforeseen hurdles, such as delays in applications, the courts guiding principle is to achieve what is best for the baby.

The court will also appoint a Parental Order Reporter to examine if the parents meet the criteria and to report to the court with that analysis. Taking early legal advice will help this process go smoothly for all involved, ensuring any hurdles are navigated, and leaving the parents to enjoy life with their new child. [Learn more about the challenges ahead and how our family team can support you.](#)

[Download our free webinar on the essential legal advice you need when having a child using a surrogate](#)

For more information please speak to Katherine Marshall or a member of the family team.



Katherine Marshall
Partner

katherine.marshall@shma.co.uk
+44 (0)7973 794297



Lincoln launches

Shakespeare Martineau has launched in Lincolnshire as part of the firm's growth strategy, with two newly appointed partners providing a face for the brand locally.

Jonathan Stork and Michael Squirrell have joined from law firm Wilkin Chapman with over 25 years combined experience in the Lincolnshire market. Jonathan is a specialist in litigation and dispute resolution, with particular expertise in contested trust and probate work, disputes within the agricultural sector and commercial litigation.

Michael Squirrell is a commercial and corporate lawyer with a particular passion for digital and tech, intellectual property and trade marks and advising charities.

We're really excited to have Jonathan and Michael joining us, and we look forward to growing the Lincoln team further.

Shakespeare Martineau offers clients the best of both worlds: establishing a Lincoln presence combines local knowledge with the backing of more than 850 experts nationally. This scale and full-service approach means we can help take local businesses to the next level and are almost unlimited in the legal support we can offer; as well as supporting people through key life milestones.

Lincolnshire holds a lot of potential, and our clients will benefit from a local presence as well as the backing of our wider teams in energy, education, agriculture, fast-growing businesses and wealth management, to name just a few.

Michael Squirrell

For more information please speak to Jonathan Stork in the litigation team or Michael Squirrell in the corporate and commercial team.



Jonathan Stork
Partner

jonathan.stork@shma.co.uk
+44 (0)7929 849085



Michael Squirrell
Partner

michael.squirrell@shma.co.uk
+44 (0)7929 849067

Business interruption insurance and holiday lets

For many holiday homeowners, and for holiday-let businesses across the UK, 2020 was a very difficult year. A brief period of reprieve after the first national lockdown - when all hospitality businesses, including holiday lets were forced to close - has not made up for the inevitable losses in income suffered as a result of the first, second and now third lockdowns.

All business owners will now be pinning their hopes on the 2021 holiday sector opening up again, waiting, with optimism, for the influx of summer bookings. How do you mitigate against the loss of income for such an unprecedented event as this global pandemic?

If you are running your holiday let as a business then insurance against fire, flooding and other insurable property damage will be something you will no doubt have.



You might also have some basic business interruption cover for any property damage i.e. to cover loss of earnings or profit in the event of a fire. Whilst it will, hopefully, never be needed, knowing it is there can be a real business saver if the property is unable to be used.

Some policies though also provide cover for non-property damage (often as an extension to a property damage policy) and therefore have become very relevant because of the pandemic.

Why business interruption insurance is so important for holiday-let owners

Some policies cover business losses that relate to infectious or notifiable diseases (like COVID-19). These policies may also provide cover for non-damage denial of access and for public authority mandated closures or restrictions. If you had to close your holiday let business because of an outbreak of a disease at or within the vicinity of your holiday let or due to the Government's mandatory requirements to close, then this is where this type of business interruption insurance may be of assistance.

If cover is provided it may lead to the insurer paying out for loss of profit or loss of earnings or any additional expenditure incurred, subject to the limitations in the policy.

Making a claim

During the first lockdown one of the biggest issues facing small businesses, including registered holiday lets, was that many insurance companies were dismissing claims that businesses and individuals were bringing under their business interruption insurance.

The Financial Conduct Authority (FCA) brought a test case on behalf of small businesses to seek clarity on various policy wordings in non-property damage business interruption policies. A number of insurers co-operated with the court case and had their policy wordings tested. In particular, the case looked at how to interpret disease clauses, mixed disease and denial of access clauses (hybrids), denial of access clauses and what triggered a pay out under the policies. In the Supreme Court (following an appeal from the High Court), it was decided that, in the main, the High Court's decision, mainly in favour of the policyholders, was right. The Supreme Court agreed with much of what the lower court had said and went further in some aspects.

As such, insurers will potentially now have to pay out billions of pounds to those businesses who rightly claimed on their business interruption insurance, (and for those yet to claim) providing a major financial lifeline in this challenging time.

[Read more about the Supreme Court judgement.](#)

Gaining clarity

As well as giving a lifeline to small businesses that they so desperately need, the Supreme Court's decision provides some clarity. It will be much harder for the insurer to escape responsibility for those policy wordings identical

to or very similar to the ones tested in the recent case. However, this remains very much a grey area. Whilst the decision provides business owners with the confidence they need to claim, you still have to look at each policy on a case by case basis. The court also did not say how much insurers should pay out, so there will be ongoing arguments about what sums are paid out and for what period.

It is still important to look at the specific wording in each policy. This analysis will work out whether you are eligible or not. Most insurers will have been in contact with policyholders affected by the Supreme Court's decision (as the FCA encouraged them to be pro-active) but you should not wait. You should take a pro-active step yourself and get the policy reviewed.

If you are thinking about claiming on your business interruption insurance, our litigation and dispute resolution experts can help you to judge whether you are likely to be successful. Alternatively, if you were recently turned down for a claim, we can review your case to see whether you are in fact due a pay-out. Either way, we're here to support you.

[Find out more about how we can help you make a claim on your business interruption insurance policy, or a challenge a previously rejected claim.](#)

For more information please speak to Steven Skiba or a member of the dispute resolution team.



Steven Skiba
Legal Director

steven.skiba@shma.co.uk
+44 (0)7977 906262

An act of plenty The Agriculture Act 2020

In November 2020 the long awaited Agriculture Act 2020 finally gained royal assent after what seems to have been a long and winding road. The NFU has described it as a 'landmark moment for Post-Brexit farming', and it sets a new of direction of travel for the agricultural sector in the UK.

So how will the new Act change things?

Financial support

One of the key parts of the legislation is the way those in and supporting farming will access financial assistance in the future and that financial assistance available will be linked with improving climate change and the environment and in farming sustainably.

Unlike the Subsidy Payment from the EU, this financial assistance is designed to flex and change through time. Bite size alerts with further updates will be released over the coming year.

Over the next seven years the European subsidy basic payment scheme will be phased out with direct payments over the next four years being reduced by 50%. This phasing system has been introduced to give those that rely on the payment time to plan for a future without it. However it is possible to start planning for this now.

As part of the Act, the UK Government is introducing schemes which will provide subsidy payments to farmers, such as the Environmental Land Management (ELM)

scheme. It is important to remember however that these are not a replacement of the basic payment scheme. The ELM Scheme has been founded on the principle of 'public goods for public money', the aim being to help deliver the Government's ambitious 25 year environment plan and to help meet the target of net zero emissions by 2050, whilst also supporting the rural economy.

Farmers and farm managers will see subsidies made for delivering public goods that do not necessarily have an obvious market value such as;



Clean air



Clean and plentiful water



Plans for thriving wildlife



Protection from environmental hazards



Engagement with the environment



Reduction of and adaption to climate change.

It is also expected that penalties for any breach are likely to be smaller and more proportionate than those that have seen with the outgoing European legislation, and of course there will be no oversight by the EU (which has always been in the minds of DEFRA inspectors).

The ELM scheme will be fully rolled out by 2024 although various trials are already taking place. The aim is to see all farmers in a position where they can access sustainable farming incentives but for the larger land holdings and estates there will be some big ticket items available for landscape recovery.

What can be done to prepare?

Planning and preparation will be key and now a good time to have conversations about the future of farms and estates. A number of organisations are already inviting farmers to join together to provide data that will ultimately help to inform the policy and regulation which will affect the sector over the next seven years. Farmers are being encouraged to consult and collaborate as part of the co-design of this policy and key to this will

be talking with family and neighbours to consider how the business structures can be more efficient, improve climate change and adapt to reduce carbon emissions and ultimately access financial support as a result.

Food production and sustainability

The Agriculture Act does not specifically reference food production as something that will receive subsidy. The Government will be continually monitoring our food standards and sustainability with three yearly reviews. However, whilst this is considered a positive move there is still some discord that there is no mention of imposing UK food standards on imported food.

However, for the first time for many decades there is now a requirement for the Government to regularly review our national food production against consumption: food security is back on the map, and indicates a revived concern about its ability to feed the nation from production within UK borders.

Contract terms will play an ever increasing part

There is much discussion about the need to recognise food for wellbeing and not just as an economic commodity and to some extent the COVID-19 pandemic has reinforced the importance of the food supply chain: that basic need to ensure that we as a nation are fed. But ultimately the Act itself places reliance on these supply chains and lays the foundation for this by writing provision to ensure fair contract terms can be struck within these supply chains. To make the most of this farmers will need to look longer and harder at technology to see how investment in this can increase productivity and reduce overheads, as well as looking at and considering contract terms carefully to make sure they reflect legislation – and work for your business.



Is this time to exit?

For those farmers that are not interested in or don't have the appetite to engage in the new schemes, for a variety of reasons, it is recognised that they may ultimately choose to exit the sector. There are proposals to roll up basic payment scheme entitlement payments into one exit payment although HMRC is still considering the tax implications for this. Again this offers a good opportunity to sit down and consider with family and advisers the future of the farm and farming business to ensure all assistance available is fully explored.

Tenancy reform

Finally we see the Act bring changes to the agricultural tenancies, paving the way for further overdue tenancy reform, encouraging landowners to provide longer term farm business tenancies and agricultural tenants to feel secure in discussing diversification options with their landowner – without the risk of losing security. This is going to prove important in making the natural capital investment and bringing about the environmental changes governmental policy requires. None of this can be successfully achieved on standard two or three year tenancy agreements or where tenants are unable to change and improve their farming methods due to outdated tenancy provisions.

To round up

The long awaited Act together with the coronavirus pandemic and Brexit has resulted in a turbulent and uncertain time for the sector. However, profound change is happening and this is a perfect opportunity for all involved in the agricultural sector to take stock, reflect, discuss and plan for the future. Unlocking the support payments available will be key to future plans and whilst the details are not yet available planning and preparation, finding opportunities to collaborate with new initiatives and share in the financial support available will be crucial to the survival and future in the new post Brexit world.

[Download our free webinar on the impact of Brexit on farmers and land owners.](#)

For further information on any issue affecting the agricultural sector please contact Jennie Wheildon or a member of the agricultural team.



Jennie Wheildon
Legal Director

jennie.wheildon@shma.co.uk
+44 (0)7929 845346

Team scoops top award

Shakespeare Martineau has won law firm of the year at the Family Law Awards 2020.

The Lexis Nexis Family Law Awards took place in November last year with our family team scooping the coveted Family Law Firm of the Year award – Midlands and Wales, amongst stiff competition.

Taking the top spot the firm was celebrated for its excellent client service acting on some of the most complex national and international family matters of the past year. Our rapid and comprehensive response to the COVID-19 pandemic was also recognised, acknowledging our broad range of free seminars on offer to clients within days and our free information helpline.

The judging panel was made up of members from the Association of Lawyers for Children, the Family Bar Association, Resolution, the Chartered Institute of Legal Executives and the family legal press.

“We are absolutely thrilled and delighted to have won this prestigious award. To be recognised by our peers for the complex and vital work we do, making huge differences in the lives of our clients and their families is gratifying and hugely rewarding. Our wonderful team is a delight to be part of and to have won this award in this, the most trying of years for many of our clients, is testament to their expertise, empathy and dedication.”

Helen Bowns

[Find out how our award-winning family team can help and provide you with support.](#)



For further information please speak to Helen Bowns or a member of the family team.



Helen Bowns
Partner
Head of Family

helen.bowns@shma.co.uk
+44 (0)7891 338054



Step into Platinum

Shakespeare Martineau has been awarded the STEP Platinum Employer Partner accreditation, the highest of three accreditation levels awarded under the STEP Employer Partnership Programme.

Founded in 1991, STEP is the global professional association for practitioners who specialise in family inheritance and succession planning. STEP works to improve public understanding of the issues families face in this area and promotes education and high professional standards among its members.

STEP members help families plan for their futures, from drafting wills to issues surrounding international families, protection of the vulnerable, family businesses and philanthropic giving. Full STEP members, known as TEPs, are internationally recognised as experts in their field, with proven qualifications and experience.

To achieve platinum accreditation, a firm must demonstrate that their employees are encouraged to share knowledge and to learn from others, creating a positive work and learning environment. The importance of learning and development is championed from the top and cascaded throughout the organisation.

On awarding Shakespeare Martineau the accreditation, Trent Weber, Senior Manager Employer Partnership at STEP, said:

“Shakespeare Martineau is to be commended on an excellent application which was detailed,



thorough, and demonstrated extensive learning and development provision and good communications, with a supportive leadership and positive work and learning culture.”

Anne Tromans, head of wealth at Shakespeare Martineau said:

“We are extremely proud to have been recognised as a leading firm for learning and development. We are committed to helping our people fulfil their career ambitions across all areas of the business, which is evidenced by the enormous emphasis placed upon personal and career development.”

“All of our policies and initiatives aim to foster positive, passionate people whose talent is nurtured and retained. Technical expertise and personal and mental wellbeing are afforded equal importance by the firm to help bring out the best potential in each individual.”



For further information on planning for the future please contact Anne Tromans or another member of the private client team.



Anne Tromans
Partner - Head of Wealth

anne.tromans@shma.co.uk
+44 (0)7971 844065

Five myths surrounding divorce

The new year typically sees a spike in divorce enquiries for many solicitors – and 2021 has been no different, especially with the additional stresses and strains COVID-19 has placed on couples and families.

But did you know there are several myths surrounding civil partnerships, marriage and divorce? Here we answer some of the frequently asked questions from couples across the country.

Can I get divorced if we have just drifted apart?

Falling out of love and drifting apart is not itself legal grounds for divorce, however, looking deeper into the reasons may show that one party's behaviour has actually been the cause and therefore a divorce could proceed. Until the 'no-fault divorce' is available (expected Autumn 2021) you will have to prove your marriage has irretrievably broken down due to one of the five 'divorce facts': adultery, unreasonable behaviour, desertion, or separation of at least two years or in some cases five years. The divorce process generally takes between six and nine months but can take longer if financial matters still need to be agreed.

[Read our frequently asked questions on divorce and separation.](#)

[Our handy guide on how to get a divorce](#) also breaks down the process of getting a divorce into seven easy steps.



Will my partner get 50% of our assets, even if they have cheated?

In England, the courts will always start with a 50/50 split of assets. But there are a number of instances where this may not be the case, such as the length of the marriage/ civil partnership, large sums of inheritance or money generated after separation and sometimes generated pre-marriage and whether there are children. Fault – such as one partner cheating – has no bearing on the division of assets.



Do I have to give my engagement ring back if we split?

If you break up with your partner, you may feel a moral obligation to return the ring - however, unless it can be proved that the ring was given conditionally, the law states that it is an absolute gift, meaning you do not have to return it to your ex.

Do I need to appoint a solicitor?

While it is possible to get a divorce without the support of a solicitor, you may run the risk of missing important legal loopholes, such as the 'remarriage trap'. Put simply; if you remarry without a claim for a financial order you may be barred from seeking maintenance and other financial claims. You may also find yourself out of pocket down the line. Without full legal severance, it is possible that an ex-partner could chase you for a share of funds you may accrue later in life – whether that be a pension pot, inheritance or even a lottery win!



We're not married, but we've been together years – will I get 50%?

There is no such thing as a 'common law wife/partner/husband'. Cohabiting couples frequently believe that living with somebody for a prolonged period of time leads to certain legal rights such as a share of property owned by one party – it does not. If you choose not to marry then do consider a [living together agreement](#) to protect your best interests.



We're here to help

Going through a divorce or separation can be one of the most stressful periods in your life and highly emotional. No matter where you are on your journey, our team of family law experts can help guide you through the maze of emotional and legal responsibilities.

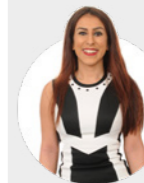
For advice and support contact the team or complete our [enquiry form](#) and we'll call you back to arrange a free, 20 minutes no-obligation confidential consultation at a time to suit you.

For further information, please contact Jane Charlton, Stephanie Kyriacou or a member of the family team.



Jane Charlton
Legal Director

jane.charlton@shma.co.uk
+44 (0)7595 781224



Stephanie Kyriacou
Associate

stephanie.kyriacou@shma.co.uk
+44 (0)7885 988986

Brexit and divorce

The family law legal system in the UK has increasingly become an international one - over the last few years alone we have seen an increase in cases involving international family law issues and cross-border disputes.

It is now not unusual for families to live in different countries and/or own properties abroad alongside multinational businesses. There are also many children that are part of families who frequently travel between, and live in, more than one country.

So how will Brexit affect the global nature of the way in which many families live and work? We highlight some of the key areas where Brexit is likely to have an impact.

Will Brexit affect my divorce?

The pre-Brexit situation

The question of which country a divorce may be issued in was governed by a Council Regulation called Brussels II. This meant that there was often a race to the court under what is known as the lis pendens rule. This is a rule that the first party to issue proceedings at court, secures the jurisdiction of the court in that particular country. Urgent advice and action was often needed to find out the best place for proceedings and then to issue quickly.

Divorces issued on or before 31 December 2020 will continue to follow these rules and the divorce will be recognised according to the Brussels II regulation.

Divorce after Brexit

The lis pendens rule is now replaced by a forum conveniens rule, which previously applied to all other non-EU countries. This essentially means that a court may decline to deal with a divorce if it appears more appropriate or convenient for a different country to deal with it. It is anticipated that this may well lead to more protracted and costly disputes regarding which EU country should issue the divorce if the parties cannot agree.

Another area which has been impacted by the Brexit deal is the jurisdictional grounds to bring a divorce. A petitioner can only start divorce proceedings in England and Wales if the English court has jurisdiction to deal with those proceedings. The removal of Brussels II has now changed the definition of the jurisdiction in the divorce petition and these discreet technical points may well have a big impact on future divorce applications.

[Read more about the divorce process and how we can help you.](#)

The impact of Brexit on children law

The pre-Brexit situation

The Brussels II regulation also provided consistency in international family law disputes e.g. by recognising parental responsibility across EU member states and regulating the rules around child protection and child abduction in the EU.

How have things changed after Brexit?

It remains to be seen how this will impact on future international children disputes. What we can say is that it is likely to lead to more cross-border disputes which could potentially be very complicated.

Parenting through a divorce or separation is not easy, regardless of jurisdiction. [Read more](#) about how we can guide you through the process and ensure the welfare of your children remain the top priority.

In addition to the above, there are many other changes within family law including areas such as maintenance agreements. As with all legal matters, however, our experience has shown that costs can be reduced and litigation less protracted if legal advice is sought at an early stage.

[Read more about our international family law expertise.](#)

No doubt we will find in the coming months that there are likely to be some cases that fall through the cracks, as there will undoubtedly be some gaps in the law that the Brexit deal has not covered. Therefore the true impact of Brexit on divorce and family law still remains to be seen. We continue to monitor the key updates and our team of family lawyers are on hand to advise you with any international family law query that you may have.

For further guidance and support please contact Monica Ghai on another member of the family team.



Monica Ghai
Solicitor

monica.ghai@shma.co.uk
+44 (0)7812 508843

Going for gold

Last September we launched a feedback process across our wealth teams (private client and family) using Feefo (independent market research) reviews.

We set ourselves a target and we're delighted that we have surpassed our 2020 review target AND maintained a score of 4.5 and above. (In fact our current rating is 4.8!)

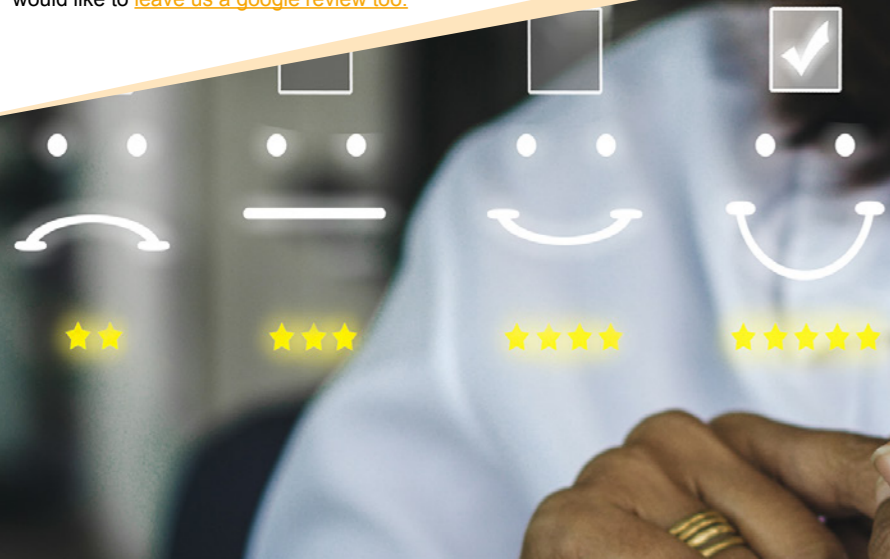
Maintaining a score of 4.5 or above means we've been accredited the Gold Trusted Service Award!

A big thank you to all our clients who have left a review. Some of your lovely comments demonstrate our passion for delivering a trusted client service.

We want to ensure we deliver excellent client service at every opportunity so we would be delighted if you would like to [leave us a google review too.](#)

feefo

Independent Customer Feedback



Stamp Duty Land Tax holiday

Extension announced and help to get on the housing ladder

I think it is fair to say that the property market has exceeded most expectations in terms of the volume of activity during the course of the pandemic.

The steps the Government is taking

■ The Government has announced a further extension of the holiday to the end of June, leaving the 'holiday' running in its current format. Although the stamp duty holiday has definitely increased the activity in the market, it has also increased the levels of pressure on the industry. This extension now takes the pressure off the huge volumes of transactions that were pushing to complete before the end of March 2021. However, without further measures the Government is just moving the deadline to the end of June which could leave clients in the same position come May/June and this may not be a satisfactory outcome for a number of people.

■ From end of June onwards, the Government is to taper the end of the stamp duty holiday. At present, no stamp duty is payable on a purchase up to £500,000.00 (unless the property qualifies for the second home stamp duty surcharge). The proposal is to taper the holiday down from the current level of £500,000.00 to £250,000 until the end of September and from 1 October it will return to the normal levels of stamp duty (payable on properties over £125,000) before the pandemic. This is a much more controlled end to the stamp duty holiday and may relieve some of the pressure on the industry.

The Chancellor has also announced a new low-deposit mortgage guarantee scheme to bring back low deposit mortgages that have virtually disappeared over the past 12 months. Its aim is to enable more people to get on the property ladder who have been excluded until now due to not having a large enough deposit. Unlike the Help to Buy Scheme this mortgage guarantee scheme will not be limited to first time buyers or restricted to new build properties.

With the addition of this scheme and the combination of an extension and a tapered return to normal regarding stamp duty it will certainly relieve the pressure on the industry and will provide certainty for future buyers who now have the information and time to make their proposed moves. One thing we don't expect though, is for the market to calm down any time soon.

There have been a number of contributing factors to this. The pent up demand from people living in lockdown created an initial rush to the market. This rush increased further when the Government announced the Stamp Duty Land Tax holiday. And with the end of the holiday looming, the Chancellor has finally answered the big questions in his Spring Budget.

There were a number of reports speculating that the Government was proposing a three month extension to the Stamp Duty holiday and this was indeed announced, to be followed by a tapering of it to pre COVID levels.

If you are looking to buy or sell a property, or would like any further advice, please contact Tom Ansell or another member of the residential conveyancing team.



Tom Ansell
Partner - Head of Residential Conveyancing

tom.ansell@shma.co.uk
+44 (0)7973 794297

The pandemic budget

The Chancellor outlined the contents of his red briefcase in the 2021 Budget to set out as a nation, how we will recover from a crisis which has affected everyone without exception in some way.

The Government said it was “going long” with the focus clearly on fixing the public finances and an emphasis on continued support for both individuals and businesses. Many tax changes were predicted; few actually materialised.

Income Tax

The Government promised not to alter income tax rates or national insurance until the next election and they have not reneged on this by altering the rates.

From April 2021, personal tax thresholds for both basic and higher-rate taxpayers will rise as previously planned to £12,570 and £50,270 respectively, but will then be frozen until April 2026, which may cause many individuals to pay more tax as wages rise.

Steve Brandreth, Senior Client Partner at Artorius, commented that “this is welcome but it is surely only a matter of time before this comes under the spotlight once again. It is anticipated that further consultation will be recommended, which could be the catalyst for change.”

Capital Gains Tax “CGT”

Capital gain is a profit you make by cashing in assets such as real property (excluding your main home), investments, art and shares excluding cash and shares held within an ISA or pension pot.

For the 2020 to 2021 tax year, the CGT allowance is £12,300 (£6,150 for personal representatives and most trustees) so you can liquidate or give away that much in gains completely CGT-free.

The Government announced the freezing of the CGT allowance until April 2026 which will see many individuals with second homes and investments breathe a sigh of relief.

There was no mention of plans to abolish the current free CGT uplift on death and this will therefore remain a really useful tool for private individuals who wish to hang onto assets to wipe out gains on death and pass them on to loved ones at their elevated values.

Inheritance Tax (“IHT”)

Currently, individuals can pass on their Nil Rate Band of £325,000 IHT-free. In addition, there is also a Main Residence Nil Rate Band which attaches to your main home (currently £175K) which in theory means that a single person could leave their estate worth £500k without paying IHT. For a married couple, the IHT free pot is £1 million, subject to lifetime gifting. Above these thresholds, IHT is paid at 40%.

The Government again announced that these allowances will be frozen until April 2026. There were no further changes announced to the IHT regime.

Many of the anticipated capital tax changes were not forthcoming in this budget which will be a welcome relief for many individuals who were fearing seeing their hard built-up wealth going to the Treasury rather than their loved ones and families.



For more information please speak to Hannah Tait or a member of the private client team.



Hannah Tait
Partner

hannah.tait@shma.co.uk
+44 (0)7836 679545

Strength in depth

Shakespeare Martineau is a leading law firm that brings creativity, commerciality and clarity to complex challenges. We have big ambitions and work with blue-chip companies, leading organisations, high street brands and individuals across the world.

It's our business to understand yours. That's why we're committed to being just as driven, dynamic and diverse as our clients. Our multi-disciplinary team combines pragmatic advice and deep understanding of the challenges affecting businesses of all sizes. That means experts that collaborate together to think bigger about your strategic goals and how to get there.

Our approach is to think beyond just legal solutions. As long-term partners, clients continually trust us to advise on what's possible, what's prudent and what's coming around the corner.



850 people working at Shakespeare Martineau



10 office locations



111 partners

 @SHMALaw

 Shakespeare Martineau

03300 240 333

www.shma.co.uk

 SHAKESPEAREMARTINEAU