

Marriage divides England and France

Gay marriage proposals in Britain and France have shined a spotlight on the countries' contrasting family law systems, says Monique Fauchon.



For better or worse: nationality and national borders could complicate marital breakdown Photo: Karen Davies
The issue of gay marriage has prompted fierce debates in the British and French Parliaments in recent weeks and proposed legislation has highlighted couples' rights on both sides of the channel, and the surprising differences that exist between the two systems.

For British expats living in France, it can be tricky to understand exactly which system of law applies to them – especially if they are both British nationals that reside full-time in France. So what are the differences in these laws and how can British expats protect their rights?

Cohabitees' rights

Cohabitees who do not enter into any written agreement are not well protected under French law – the arrangement does not open up the right for compensation from either side if the relationship breaks down at any stage. The so-called 'common law' spouse is therefore as vulnerable in France as in the UK. Unless the partners work together or cause specific damage to the other, there will not be any obligation towards each other if they separate (the question of any children is explained below).

However back in 1999, the Socialist government in France fought to impose the Civil Solidarity Pact or 'Pacs', a formal contract by which two adults of different or same sexes can organise their life together. It is registered by a simple declaration with the court clerk and terminated by a registered letter from one of the partners to the other; there are no 'divorce' proceedings.

In their contract, the partners decide freely how much each of them will contribute and they stipulate whether the assets bought during their union are deemed to be separate or common. If either cohabitee dies, their partner is treated as a spouse under the 'Pacs', and there is no inheritance tax to pay by the surviving partner so long as a specific will has been written. Any couple living in France – including British nationals – can sign a 'Pacs'.

In contrast, the UK system currently gives no provision to protect cohabitees' rights should they later separate or one partner dies, and so British couples living in France can actually take advantage of the protection afforded by the French system through this 'Pacs' system.

Children

One of the biggest areas of difference between the French and UK legal systems is how the issue of children is treated in a relationship breakdown. As Nicolas Sarkozy's former cabinet member Rachida Dati has demonstrated with her ongoing paternity suit, the French system recognises no difference between legitimate and illegitimate children – the children are still entitled to inherit equally from both parents whether married or not.

Children's entitlement to alimony stretches beyond the age of 18 too – some English parents have been surprised to be taken to court by children in their thirties living in France and asking for their financial support!

Same-sex couples

Despite its Catholic tradition, France's approach to same-sex unions and committed cohabiting relationships is quite progressive - more so than the UK. From a tax and patrimony point of view, the French system already upholds the rights of same-sex couples from countries where homosexual marriage is permitted.

These rights could be expanded if the proposal to legalise gay marriage in France becomes law. If voted through in parliament, all the protection allowed by marriage will apply and there will be no discrimination between heterosexual and homosexual couples. This means that contribution, maintenance, compensation, divorce and inheritance status will apply to gay couples as it does already to any married couple.

Yet problems still arise when relationships cross jurisdictional borders. For example, if a marital property owned by a gay married couple is based in another jurisdiction that does not recognise gay marriage such as Egypt, then it cannot be

assumed that the rights to that property would be divided as they would be in France.

In the absence of a harmonious legal framework across different countries, British expats living in France who are concerned about their rights should speak to both UK and French solicitors.

Monique Fauchon, of law firm Fauchon Levy, specialises in advising on personal and business affairs across the English/French border