

## Chapter 2

### THE COMPLEXITIES OF IMMIGRATION LAW

2.1 It will be clear from the content of this publication that even basic immigration and nationality law has legal complexities which are not generally encountered in the family court on a day-to-day basis. Cases in the family courts are guided by some key and overriding principles: the need to avoid delay in cases involving children, the need for a plan for a child which is both appropriate and durable, the benefit to children of being brought up by or maintaining regular contact with their parents, unless doing so would place them at risk of significant harm, and the acknowledgment that a child's interests should be the paramount consideration. Decisions on these principles are generally evidence-based and case law often relates to how such evidential issues are best approached. In addition, there are a few seminal pieces of current legislation, such as the Children Act 1989, the Adoption and Children Act 2002 and the Children Act 2004. These are accompanied by some Regulations and Practice Directions.

2.2 In contrast, immigration and nationality law is dominated by legal challenges to the proper construction of a myriad of Acts and Regulations. The Immigration Act 1971 and the British Nationality Act 1981 remain in force and there have been a significant number of additional Acts since 1988; all of which include further complex provisions relating to the entry, removal and rights of migrants. There have also been many more separate statutory instruments, which deal with immigration and nationality matters since 2000. The UK Border Agency's website also contains a very large number of policy documents, which guide the exercise of discretion by the Secretary of State for the Home Department, entry clearance officers and immigration officers. Decision-makers also take into account EU directives and regulations and International Conventions, such as the European Convention on Human Rights, the Convention Relating to the Status of Refugees, the United Nations Convention on the Rights of the Child and the Council of Europe Convention on Action against Trafficking in Human Beings. There is also an equally compendious body of interpretative material, including case law generated from domestic, regional and international courts and policy published by the UNCHR and others.

2.3 Family law practitioners do not need to read and become familiar with all these sources but should know enough to identify when expert immigration advice will be needed.