

TITLE: IMPACT ASSESSMENT FOR THE CHOICE OF COURT AGREEMENTS (HAGUE CONVENTION 2005 ETC) (EU EXIT) REGULATIONS 2018 [2018] NO. [XXXX] IA No: MOJ015/2018 RPC Reference No: Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date:			
	Stage: Provisional			
	Source of intervention: EU Exit			
	Type of measure: Secondary Legislation			
	Contact for enquiries: edward.tynan@justice.gov.uk			
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
n/a	n/a	n/a	n/a	Out of Scope

What is the problem under consideration? Why is government intervention necessary?

The Hague Convention of 30 June 2005 on Choice of Court Agreements (the 2005 Hague Convention) is a multilateral treaty aimed at ensuring the effectiveness of choice of court agreements between parties to international commercial transactions. It requires a court of a Contracting Party, which has been designated by an exclusive choice of court agreement to deal with disputes arising under it, to hear a case (and other courts to decline to do so), and ensures that any judgment rendered by a chosen court must be recognised and enforced in the courts of other Contracting Parties as necessary.

The UK is not a Contracting Party to the 2005 Hague Convention in its own right but is currently bound to this Convention by virtue of EU party status. Upon its Exit from the EU, the UK will cease to participate in the 2005 Hague Convention. In preparation for EU exit, the UK will commence the process of re-joining the 2005 Hague Convention as an independent Contracting Party so that the Convention can enter into force in the UK as soon as is practicable after 29 March 2019. To ensure the UK is in a position to comply with its international legal obligations once this process is complete, amendments must be made to relevant retained EU domestic law under the European Union (Withdrawal) Act 2018 to allow the Convention to operate effectively between the UK and all current and future Contracting Parties. Government intervention is required to make these amendments.

What are the policy objectives and the intended effects?

The policy objective is to ensure the UK complies with its international legal obligations to implement the 2005 Hague Convention and enable the UK's post-Exit participation in this Convention as an independent Contracting Party. This directly supports the Government's own policy for ensuring continued participation in the 2005 Hague Convention on Exit as referred to in the 'Providing a cross-border civil judicial cooperation framework' position paper, published in August 2017. There is also an objective to ensure a clear legal framework for existing choice of court agreements that would have been governed by the 2005 Hague Convention but for its disapplication to the UK on EU Exit.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

In the 'No Deal' scenario, the UK will accede to the 2005 Hague Convention as an independent Contracting Party. Two options are considered in this Impact Assessment:

- Option 0:** do nothing – make no amendments to existing domestic legislation in this area to account for the effects of the UK leaving the EU.
- Option 1:** align domestic legislation to comply with the international legal obligations set out in the 2005 Hague Convention.

The Government's preferred option is option 1 as this best meets the policy objectives.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: n/a				
Does implementation go beyond minimum EU requirements?			n/a	
Are any of these organisations in scope?			Micro Yes	Small Yes
			Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	
			Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Align domestic legislation to comply with the international legal obligations set out in the 2005 Hague Convention.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
n/a	n/a	n/a	Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a	n/a	n/a	n/a
Best Estimate	n/a	n/a	n/a	n/a

Description and scale of key monetised costs by 'main affected groups'
None

Other key non-monetised costs by 'main affected groups'
There will be negligible costs because there will be a workable international framework embedded in UK domestic legislation governing the recognition and enforcement of exclusive choice of court agreement clauses from relevant 2005 Hague Convention Contracting Parties. However, stakeholders will need to ensure they are aware of how this international framework functions, how it has been embedded in UK domestic legislation, and how it should be used to govern their interactions with relevant choice of court agreements from 2005 Hague Convention Contracting Parties.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

Description and scale of key monetised benefits by 'main affected groups'
None

Other key non-monetised benefits by 'main affected groups'
There will be a workable international framework, implemented in UK domestic legislation, governing the recognition and enforcement of exclusive choice of court agreement clauses in civil and commercial matters with relevant 2005 Hague Convention Contracting Parties. There will also be a clear legal framework for cases that would have been governed by the 2005 Hague Convention but for its disapplication to the UK upon Exit from the EU. This legal certainty means businesses will be more confident in entering into cross border contracts with individuals, businesses and parties based in another 2005 Hague Convention Contracting Party. Legal certainty will also mean there will be no confusion over where a case on relevant future cross-border contracts should be heard (jurisdiction), or that any resultant decision can be recognised and enforced in another 2005 Hague Convention Contracting Party's jurisdiction, where appropriate. This will reduce the length and cost of relevant UK civil and commercial cases which have cross-border implications.

Key assumptions/sensitivities/risks None	Discount rate (%) n/a
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BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m
Costs: n/a	Benefits: n/a	Net: n/a	
			n/a

Evidence Base (for summary sheets)

A. Background

1. The Hague Convention of 30 June 2005 on Choice of Court Agreements (the 2005 Hague Convention) is a multilateral treaty aimed at ensuring the effectiveness of choice of court agreements between parties to international commercial transactions. It requires a court of a Contracting Party, which has been designated by an exclusive choice of court agreement to deal with disputes arising under it, to hear a case (and other courts to decline to do so), and ensures that any judgment rendered by a chosen court must be recognised and enforced in the courts of other Contracting Parties as necessary.
2. The UK has been bound by the 2005 Hague Convention, by virtue of EU party status, since 1st October 2015. Upon its Exit from the EU, the UK will cease to participate in the 2005 Hague Convention. In preparation for EU exit, the UK will commence the process to accede to the 2005 Hague Convention as an independent Contracting Party. Domestic legislation must therefore be amended to allow the UK to comply with its international legal obligations to operate the 2005 Hague Convention with all current and future Contracting Parties. Legislative amendments are also necessary to provide a clear legal framework for cases that would have been governed by the 2005 Hague Convention but for its disapplication to the UK upon Exit from the EU.
3. As a matter of public international law, if a country is signed up to a Convention, then that country is obliged to make sure its laws comply with the Convention in question and enable proper application of that Convention. Therefore, government intervention is necessary to make sure amendments are made to the domestic legislation to be able to operate the 2005 Hague Convention with all current and future Contracting Parties. This would ensure that the UK is in a position to comply with its legal and international obligations once this process is complete and the Convention enters into force for the UK as soon as practicable.

B. Policy Rationale and Objectives

4. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to the more disadvantaged groups in society).
5. The main rationale for intervention for the options assessed in this Impact Assessment (IA) is efficiency: to reduce legal uncertainty regarding exclusive choice of court agreements in civil and commercial matters relating to 2005 Hague Contracting Parties. This will contribute to wider legal certainty and confidence that cross-border cases are able to be brought to court and dealt with appropriately. This will support wider economic and social interaction between the UK and all current and future 2005 Hague Contracting Parties and sustain the reputation of UK law.
6. The associated policy objectives are: (1) to ensure the UK complies with its legal and international obligations to implement the 2005 Hague Convention and enable the UK's post-exit participation in the 2005 Hague Convention as an independent Contracting Party and (2) provide a clear legal framework for how transitional cases will be treated.

C. Affected Stakeholder Groups, Organisations and Sectors

7. The Convention will apply to the three UK legal jurisdictions: England and Wales, Scotland, and Northern Ireland. The groups most likely to be affected by the options in this IA are as follows:

- UK businesses
- The providers of legal services
- UK courts

D. Description of Options Considered

8. In order to meet the policy objectives, the following options are assessed in this IA:
- **Option 0:** do nothing – make no amendments to existing domestic legislation in this area to account for the effects of the UK leaving the EU.
 - **Option 1:** align domestic legislation with the international legal obligations set out in the 2005 Hague Convention
9. The Government’s preferred option is option 1 as this best meets the policy objectives.
10. The IA process requires that all options are assessed relative to a common baseline. The baseline for this IA is to “do nothing”. In practice this is not a feasible or realistic base case because the 2005 Hague Convention is binding on the UK and therefore must be implemented.

Option 0: Do nothing – make no amendments to existing domestic legislation in this area to account for the effects of the UK leaving the EU.

11. The UK will commence the process to accede to the 2005 Hague Convention, therefore the UK is obligated, by international law, to make sure its laws comply with the 2005 Hague Convention. This requires amendments being made to domestic legislation. If the UK is not ready to implement the 2005 Hague Convention by its entry into force, the UK will be in breach of its obligations in international law. Under this option, no amendments would be made to existing domestic legislation in this area.

Option 1: Align domestic legislation with the international legal obligations set out in the 2005 Hague Convention

12. The Government’s position is that the UK would fully implement the 2005 Hague Convention. Therefore, under this option, the UK would amend domestic legislation so as to comply with its obligations in international law.
13. Implementing the 2005 Hague Convention will ensure the UK participates in a fully-functional multilateral regime, which facilitates the cross-border recognition and enforcement of exclusive choice of court agreements with all current and future contracting parties to this Convention.

E. Cost and Benefit Analysis

14. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
15. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the United Kingdom with the aim of understanding what the overall impact on society might be from the options under consideration. These impacts are normally compared to those of the ‘do nothing’ option. However, as was noted above, the ‘do nothing’ option is not feasible in this instance.
16. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, both positive or negative. Impacts in this IA are therefore

interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.

17. As noted above, the primary rationale for intervention in this instance is to promote legal certainty. However, in this case, there is no measure of legal certainty or way for quantifying its impact on wider economic interaction so all the costs and benefits in this IA are non-monetisable in nature.

Option 1: Align domestic legislation with the international legal obligations set out in the 2005 Hague Convention

Costs of Option 1

UK businesses, The providers of legal services, UK courts

18. Under this option, there will be negligible costs to these stakeholders because Option 1 enables the international framework embedded in UK domestic legislation governing the recognition and enforcement of exclusive choice of court agreement clauses from relevant 2005 Hague Convention Contracting Parties to enter into force in the UK on as soon as is practicable after 29 March 2019.
19. However, stakeholders will need to ensure they are aware of how this international framework functions, how it has been embedded in UK domestic legislation, and how it should be used to govern their interactions with relevant choice of court agreements from 2005 Hague Convention Contracting Parties.

Benefits of Option 1

UK businesses

20. Under this option, there will be a workable international framework embedded in UK domestic legislation governing the recognition and enforcement of exclusive choice of court agreement clauses in civil and commercial matters with relevant 2005 Hague Convention Contracting Parties. There will also be a clear legal framework for cases that would have been governed by the 2005 Hague Convention but for its disapplication to the UK upon Exit from the EU.
21. This legal certainty means businesses will be more confident in entering into cross border contracts as they know there are clear rules dictating where the case should be heard (jurisdiction), or that the resulting judgment can be recognised and enforced in another 2005 Hague Convention Contracting Party's jurisdiction, where appropriate.

The providers of legal services

22. The UK has a strong reputation as the leading global centre for the provision of international legal services. By complying with the international legal obligations of the 2005 Hague Convention, as embedded in domestic legislation, the UK can ensure that the UK legal services sector can continue to be at the forefront of cross-border litigation in civil and commercial matters.

UK courts

23. The 2005 Hague Convention provisions considerably limit scope for costly and time-consuming dispute over where a case should be heard (jurisdiction), or that any resultant decision can be recognised and enforced in the UK, or another 2005 Hague Convention Contracting Party's territory, where appropriate. This will reduce the length and cost of UK civil and commercial cases which have cross-border implications.

F. Wider Impacts

24. This instrument does not amend, repeal or revoke any part of the Equality Acts 2006 or 2010 or subordinate legislation made under those Acts.
25. Due regard has been taken on the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland, but as the 2005 Hague Convention and accompanying domestic implementing legislation extends to Northern Ireland, an equivalent regard has been taken on the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland.

G. Implementation

26. The 2005 Hague Convention will enter into force in the UK as soon as is practicable following the UK's exit from the EU.

H. Monitoring and Evaluation

27. As this instrument is made under the EU (Withdrawal) Act 2018, no review is required.