

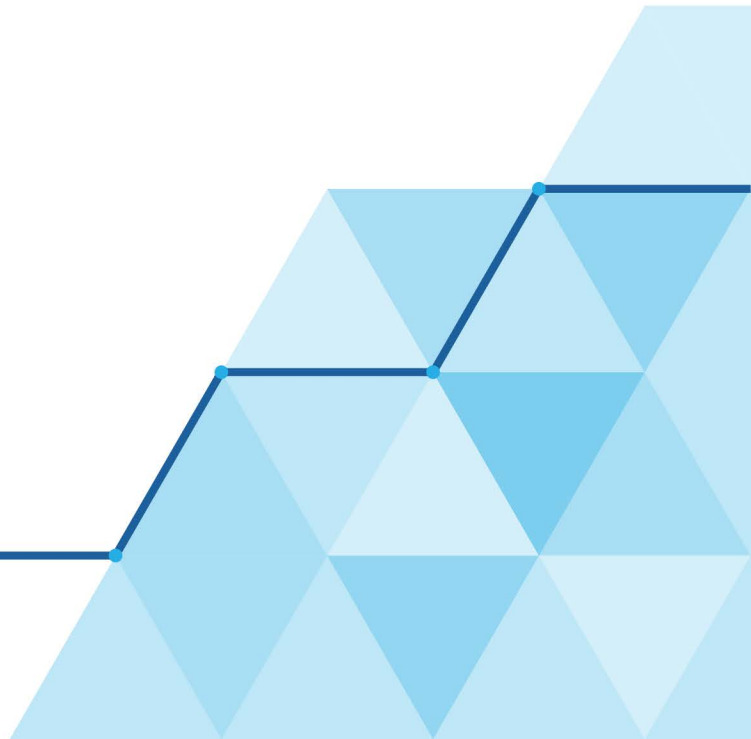


Ministry
of Justice

Consultation on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019)

This consultation begins on 15/12/2022

This consultation ends on 09/02/2023





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A consultation produced by the Ministry of Justice. It is also available at [GOV.UK](https://www.gov.uk).

About this consultation

To:	This consultation covers the United Kingdom and is generally open to the public to comment. We welcome comments from all stakeholders and especially those who have an interest in the recognition and enforcement of foreign judgments and Private International Law more broadly.
Duration:	From 15/12/22 to 09/02/23
Enquiries (including requests for the paper in an alternative format) to:	Private International Law Strategy and Implementation Team at the Consultation email inbox: PIL@justice.gov.uk
How to respond:	Alternatively, you can send responses by post to: Private International Law International Justice Policy Division Ministry of Justice 9th Floor 102 Petty France London SW1H 9AJ
Additional ways to feed in your views:	For further information please use the “Enquiries” contact details above.
Response paper:	A response to this consultation exercise is due to be published in spring 2023 at: GOV.UK .

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Chapter 1: Introduction – The UK and Private International Law

The Consultation

- 1.1 The Hague Convention of 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (hereafter: ‘Hague 2019’; ‘the Convention’) is a multilateral Private International Law (PIL) convention which establishes common rules to facilitate the recognition and enforcement of foreign judgments between Contracting States of the Convention. It was concluded on 2 July 2019 under the auspices of The Hague Conference on Private International Law (HCCH).
- 1.2 The UK Government is seeking views on its plan for the UK to become a Contracting State to Hague 2019 by ratifying it and implementing it into domestic law. As part of the decision-making process on becoming a Contracting State to Hague 2019, the Government is looking to gather wide-ranging perspectives, especially from expert practitioners who have experience of current cross-border litigation. The Government is particularly seeking views of legal professionals, academics and individuals with an interest in PIL.

UK approach to Private International Law

- 1.3 The UK has an established reputation of international collaboration and cooperation in Private International Law (PIL). Effective PIL frameworks provide an important legal underpinning in the areas of civil, commercial and family law. They support UK citizens to work, move and live across borders so that if any dispute arises there is increased certainty as to which court should hear it, which law should be applied, and how a decision from a court in one country can be recognised and enforced in another. PIL also supports international trade, which was worth over £1.4billion to the UK Economy in the 12 months to the end of July 2022.¹ PIL agreements ensure that UK businesses, big and small, continue to have the confidence to enter into cross-border contracts, investment relationships and to operate across borders in the knowledge that there are effective mechanisms in place to obtain redress in other jurisdictions.

¹ [DIT, 2022. UK Trade in Numbers, September 2022](#)

- 1.4 Following the UK's exit from the EU and the conclusion of the Transition Period, the UK is once again able to act independently in the area of PIL, negotiating and implementing agreements on its own behalf and developing new relationships with partners all over the world. The Government's Integrated Review of Foreign Policy, published on 16 March 2021, which outlines its vision for the UK's role in the world over the next decade sets out the ambition for the UK to enhance its reputation as an outward-facing trading nation, and effective PIL frameworks support this objective.²
- 1.5 That is why, following our exit from the EU, in 2020, the Government passed the Private International Law (Implementation of Agreements) Act 2020 (the PIL Act) to ensure we had appropriate and efficient powers to implement new Private International Law Agreements, thus supporting the UK's objective of being a preeminent global leader in this field. This consultation on Hague 2019 is the second example of a public consultation on a PIL agreement since the passage of that Act. From February – April 2022 the UK Government also consulted on the Singapore Convention on Mediation 2018 as part of the UK's new approach to PIL. The government response to that consultation will be published shortly.

Global Private International Law Relationships

- 1.6 The Government believes that a strong multilateral framework of PIL agreements is the best way to provide certainty for businesses and citizens doing business in or moving to other countries or having cross-border relationships. The UK has long been a world leader in the development of international co-operation in PIL, demonstrated by the significant role the UK plays in the Hague Conference on International law as one of its earliest members and in particular in the development and negotiation of the Hague 2019 Convention.
- 1.7 Being among one of the first parties to sign and ratify Hague 2019 would demonstrate the UK's intention to maintain global leadership in PIL, providing an opportunity to champion the Convention and promote the Hague Conference on Private International Law which the government believes is an important vehicle to drive the UK's PIL Strategy in the coming years.

Private International Law with the EU

- 1.8 There is currently no comprehensive multilateral PIL framework in place between the UK and the EU which covers the recognition and enforcement of civil and commercial

² [Global Britain in a competitive age \(Integrated Review\)](#)

judgments or jurisdiction.³ Since the end of the Transition Period (31 December 2020), EU-UK PIL relations have been based on the Hague Conventions, in particular in the area of family law and procedural matters such as service and taking of evidence. In civil and commercial law, the main convention that applies is the 2005 Hague Convention on Choice of Court Agreements.

- 1.9 As an EU member, the UK operated the PIL rules as laid down in the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (known as Brussels 1A) and the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (known as the Maintenance Regulation).⁴ As part of the EU the UK was party to the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments (the Lugano Convention) covering PIL relations with the EFTA countries Switzerland, Norway and Iceland. The UK applied to re-join the Lugano Convention in April 2020. Lugano is a comprehensive multilateral convention covering jurisdiction and recognition and enforcement of judgments and is open to third countries to join. It covers cross-border disputes about both civil and commercial and maintenance matters. Lugano is currently in force between the EU and three EFTA countries (Norway, Sweden and Iceland). To date all non-EU contracting parties have consented to the UK's accession but the EU has not: as such, the UK's application to join Lugano remains pending.
- 1.10 In terms of the EU's membership of the Hague 2019 Convention, on 29 August 2022 the EU deposited its instrument of accession to the Convention alongside Ukraine. Should the UK sign and ratify Hague 2019, therefore, it would provide a set of common rules for the recognition and enforcement of judgments between the UK and the EU. It would not however provide a complete substitute for the 2007 Lugano Convention which includes jurisdiction rules and PIL rules on family maintenance.
- 1.11 Looking forward, should the UK accede to the Lugano Convention in the future, the Lugano Convention rules would supersede Hague 2019 to provide jurisdiction rules and a recognition and enforcement framework between the UK, the EU and EFTA states, where they cover the same subject matter. In this scenario, Hague 2019 would continue to provide the mechanism for cooperation in relation to recognition

³ Title VI of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community can apply to cases on-going at the end of the transition period.

⁴ [Regulation \(EU\) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters \(europa.eu\)](#) and Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

and enforcement of judgments between the UK and the other Hague 2019 Contracting States around the world.

The Hague Conference on Private International Law

- 1.12 The Hague Conference on Private International Law is an intergovernmental organisation which works for the progressive unification of the rules of PIL. The Conference provides a forum for the agreement of international conventions, protocols and soft law instruments to support cross-border cooperation in civil and commercial matters, including family law.⁵ The Hague Conference currently has 91 Members: 90 States and 1 Regional Economic Integration Organisation (the EU). It is also possible for countries that are not members of the Hague Conference to become party to Hague Conventions. The full list of members of the Conference can be seen in *Annex A*.
- 1.13 In 1992, the Hague Conference initiated work on the international jurisdiction of courts and the recognition and enforcement of their judgments abroad in matters concerning civil and commercial litigation. The aim then was focused on crafting a convention to deal both with recognition and enforcement of judgments and direct rules on the international jurisdiction of courts, but no comprehensive agreement was reached between the negotiating parties.
- 1.14 The project was then broken into separate strands, with the first leading to the Hague 2005 Choice of Court Convention which focuses on international cases involving exclusive choice of court agreements. In 2011, work started in relation to the recognition and enforcement of judgments in international cases more broadly. This led to the conclusion of the 2019 Judgments Convention in July that year. The UK negotiated Hague 2019 whilst a member of the EU, contributing to a joint EU position, which took account of UK priorities. In February 2020 work started on a possible future convention on jurisdiction rules in civil and commercial matters. This work remains ongoing and the UK is participating fully in its development.

⁵ <https://www.hcch.net/en/about>

Chapter 2: Background – The Hague 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

Purpose and benefits of Hague 2019

- 2.1 Hague 2019 sets out to provide a global framework of common rules to facilitate the recognition and enforcement of judgments from one jurisdiction to another. By facilitating the recognition and enforcement of foreign judgments, the Convention enhances access to justice and strengthens a positive national and international environment for multilateral trade, investment, and mobility.⁶ Hague 2019 aims to reduce transactional and litigation costs in cross-border matters and to promote international access to justice. The Convention provides greater certainty and predictability for those dealing in cross-border civil and commercial disputes. It ensures that a successful party will benefit from having a judgment that can be more easily recognised and enforced internationally.
- 2.2 The Convention requires Contracting States to recognise and enforce civil and commercial judgments within the scope of the Convention (see below for scope) handed down in other Contracting States. Article 4 establishes the key obligation for Contracting States as part of the Convention “a judgment given by a court of a Contracting State (*State of Origin*) shall be recognised and enforced in another Contracting State (*Requested State*).”
- 2.3 With contracting States of Hague 2019 bound to recognise and enforce judgments from other Contracting States, this allows a litigant to make an informed decision as to where to initiate proceedings, subject to jurisdiction rules, taking into account where a judgment will be recognised and enforced.⁷ While most countries have domestic rules which allow judgments from other countries to be recognised and enforced in another, these rules are different in each country. Hague 2019 aims to provide a uniform approach and therefore increase certainty for parties.
- 2.4 For the UK, the government believes that joining Hague 2019 stands to benefit both businesses and consumers operating and living across borders, between the UK and

⁶ <https://www.hcch.net/en/instruments/conventions/specialised-sections/judgments>

⁷ <https://assets.hcch.net/docs/36b240ac-8228-481d-a33b-3716baf4c656.pdf> (HCCH Explanatory Report)

other countries. It will provide assurance that UK judgments within scope will be recognised and enforced in other countries who are, or become, Parties which will in turn encourage trade and investment. Whether or not a decision will be recognised and enforced in another country can be a factor when businesses choose the courts to hear any disputes that may arise, and so membership of Hague 2019 is considered to be a step that will support the UK legal sector.

Definitions

2.5 Article 3 lays out the definitions for the purposes of the Convention:

- a. “defendant” means a person against whom the claim or counterclaim was brought in the State of origin;
- b. “judgment” means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses of the proceedings by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.
- c. An entity or person other than a natural person shall be considered to be habitually resident in the State –
 - i. where it has its statutory seat;
 - ii. under the law of which it was incorporated or formed;
 - iii. where it has its central administration; or
 - iv. where it has its principal place of business.

The scope of Hague 2019

- 2.6 Hague 2019 is limited in its coverage to rules of recognition and enforcement. It does not provide direct jurisdictional rules (rules to determine which country’s courts will hear a case) in cross-border civil and commercial cases.
- 2.7 The Convention only concerns civil and commercial matters, and it specifically excludes family law, inheritance, intellectual property, insolvency and administrative law matters. The full list of areas of law and types of disputes which are excluded from scope can be found at Annex B.
- 2.8 Hague 2019 does not apply to arbitration proceedings. This is largely to prevent the Convention from interfering with arbitration and international conventions on this subject, particularly the 1958 New York Convention. Arbitration in England, Wales

and Northern Ireland is governed by the Arbitration Act 1996 and in Scotland by the Arbitration (Scotland) Act 2010.⁸

- 2.9 Regarding dealing with issues of scope, Article 2 Paragraph 2 of Hague 2019 confirms that if an issue which would normally be excluded from the scope of the Convention arises as a preliminary question or as a defence (as opposed to being the ultimate issue for resolution in the case – i.e. the “object of proceedings”) this does not in itself put the dispute itself outside of the Convention’s scope. However, that should be read subject to Article 8. Article 8 provides a) that the outcome of the preliminary issue itself is not liable to recognition or enforcement under the Convention; and b) gives discretion to refuse recognition and enforcement where the ultimate judgment was based on such a finding (a judgment based upon a preliminary issue finding that was out-of-scope).⁹
- 2.10 The Explanatory Report to the Convention explains this by way of an example of a court ruling on a breach of contract having to decide first whether one of the parties had the capacity to enter into that contract in the first place. This preliminary issue is excluded under Article 2(1)(a) and this matter cannot be recognised under the Convention. However, if the court decided the party did have such capacity, a decision on the breach of contract itself could be recognised and enforced.
- 2.11 Hague 2019 will only apply to a judgment if the Convention had effect between the State of Origin and the State in which recognition or enforcement is sought at the time the proceedings began in the State of Origin. *State of Origin* can be defined as a place or State where a judgment is originally given by a court.

Signatories to Hague 2019

- 2.12 Hague 2019 stipulates that the Convention shall enter into force in a particular State on the first day of the month following a period of 12 months since that country’s ratification was notified by the Depositary. Therefore, Hague 2019 will enter into force initially 12 months after the ratification by the second party provided no objection has been made in relation to the Convention operating between these two countries.
- 2.13 The Convention has so far been signed by seven parties: Israel, Costa Rica, Ukraine, Uruguay, the Russian Federation, the United States and the European Union. Both the EU and Ukraine ratified the Convention in August 2022. Accordingly, at the time of writing, Hague 2019 is set to enter into force between the EU and Ukraine in

⁸ [Arbitration Act \(1996\)](#) and [Arbitration \(Scotland\) Act 2010 \(legislation.gov.uk\)](#).

⁹ [a1b0b0fc-95b1-4544-935b-b842534a120f.pdf \(HCCH Explanatory Report – §285\)](#)

September 2023. Should the UK sign and ratify the Convention, it would then apply between the UK, the EU and Ukraine 12 months after the UK's ratification.

Chapter 3: Operation of Hague 2019

Judgments eligible for Recognition and Enforcement under Hague 2019

Article 5

- 3.1 As above, there are no direct rules of jurisdiction in the Convention. That means that the Convention does not specify in which country's court a case must be heard. Under Article 5, however, before a judgment can be recognised and enforced there are indirect rules of jurisdiction which establish certain eligibility requirements in order that recognition and enforcement of a judgment can take place.
- 3.2 Article 5 of Hague 2019 defines the essential conditions of eligibility for judgments to be recognised and enforced under the Convention. A judgment can circulate under the Convention provided that it meets one of the indirect jurisdictional grounds listed in the Article. There are two different types of ground in Article 5.
- 3.3 Firstly, there are “**general**” grounds, in the sense that they do not relate specifically to the subject matter of the case such as the place of residence or business of the parties needing to be in the State of the court giving the judgment or grounds in relation to the type of dispute. Provided it is a civil and commercial dispute and not in a category entirely excluded under Article 2, the ground is available. Grounds under Article 5.1 (a), (b), (c), (d), (e), (f) and (l) fall into this category, (m) deals with non-exclusive choice of courts.
- 3.4 The second type is “**special**” (or “**specific**”) jurisdiction grounds, where the ground is only available for a specific type of subject matter, e.g. Article 5.1.(g), contractual disputes, or Article 5.1.(k), disputes internal to a trust.
- 3.5 It is important to note that in relation to the type of dispute, the grounds of eligibility are not restricted to the specific grounds but could relate to the general grounds. For example, in a contract dispute, if the defendant is the person enforcement is sought against, the fact that they were sued in their state of habitual residence (ground Article 5.1.(a)) is enough, whether or not the conditions of ground Article 5.1.(g) (the contract specific ground) apply.
- 3.6 There is one subject area where Article 5 grounds do not apply and Article 6 applies instead as it provides an “exclusive basis.” The judgment cannot circulate (even if an Article 5 ground would otherwise apply) unless it fulfils the condition in Article 6, which relates to judgments which rule on rights in immovable property. A judgment can only be recognised if the property is situated in the State of Origin (i.e. the State

in which the judgment was given). This is a well-recognised rule in Private International Law reflected in the direct jurisdiction rules of many countries.

- 3.7 Paragraph 1 of Article 5 lists the connections with the State of Origin that are accepted for recognition and enforcement of the judgment in the requested State.
- 3.8 The exhaustive list of requirements which render a judgment eligible for recognition and enforcement can be found in Article 5.¹⁰
- 3.9 Paragraph 2 deals with judgments given against consumers or employees.
- 3.10 Paragraph 3 establishes the jurisdictional filter applicable to judgments on a residential lease of immovable property (tenancy).

Conditions under which recognition and enforcement may be refused

- 3.11 The circumstances in which the recognition and enforcement of a judgment may be refused under Hague 2019 are dealt with in Article 7 (see annex C). Paragraph 1 of Article 7 sets out the grounds for which the recognition and enforcement of a judgment may be refused. These grounds include if the judgment was obtained by fraud and a lack of proper notification to the defendant of documents which initiated the proceedings, that ensures the most basic principle of procedural justice; the right to be heard.
- 3.12 Paragraph 2 deals with cases where there are parallel proceedings (i.e. where the same parties are involved in proceedings on the same subject matter) in the State where recognition or enforcement is requested and where these parallel proceedings were started before those in the court that issued the judgment for recognition and enforcement.¹¹ For example, the recognition and enforcement of a judgment given in France could be refused by the UK under Hague 2019 if there were parallel proceedings in courts here.
- 3.13 There are some limitations on the extent of recognition and enforcement contained in Articles 8, 9 and 10. Article 9 provides that where a judgment contains elements capable of recognition and enforcement and others not so capable, recognition and enforcement can be granted for the former on their own if the judgment is severable, that is to say if those elements can stand alone.¹²

¹⁰ [HCCH - Full text of Hague 2019 Convention](#)

¹¹ [a1b0b0fc-95b1-4544-935b-b842534a120f.pdf \(HCCH Explanatory Report – §273\)](#)

¹² [a1b0b0fc-95b1-4544-935b-b842534a120f.pdf \(HCCH Explanatory Report – §289-290\)](#)

3.14 Article 10 specifies that there is no requirement to recognise and enforce a judgment to the extent that it is not compensatory but has a punitive element (goes beyond compensation).¹³

3.15 Article 11 allows settlements approved by a court to be enforced (but note, not recognised) in the same manner as judgments.

Procedure for applying Hague 2019

Article 12

3.16 Article 12 of Hague 2019 sets out the steps a party is required to take to seek recognition of a judgment or bid for enforcement.

3.17 The party must produce:

- a. An official copy of the judgment.
- b. Documents which establish that the judgment has effect or, where applicable, is enforceable in the State of origin.
- c. A certificate of a court (including an officer of the court) of the State of origin stating that the judicial settlement or a part of it is enforceable in the same means as a judgment in the State of origin.
- d. If the judgment was given by default, a document establishing that the document which initiated the proceedings or an equivalent document was notified to the defaulting party.

3.18 Furthermore, the court may require the production of additional documents to verify whether the conditions of Article 12 of the Convention have been satisfied.

Article 13

3.19 Article 13 of Hague 2019 specifies that the process for recognition and enforcement of a judgment will be governed by the law of the requested State i.e. the State in which is sought the recognition and enforcement of the judgment. The Convention also says that the State in which the judgment will be recognised or enforced, must act as efficiently as possible during the process.

¹³ [a1b0b0fc-95b1-4544-935b-b842534a120f.pdf \(HCCH Explanatory Report – §292\)](#)

Q1: Should the UK accede to Hague 2019? Please provide your reasoning. What do you expect the added value to be for the UK upon accession?

Q2: Is this the right time for the UK to consider Hague 2019? Are there any reasons why you consider now would not be the right time for the UK to become a Contracting State to the Convention?

Q3: What impact do you think becoming a Contracting State to the Convention will have for UK parties dealing in international civil and commercial disputes?

Q4: What legal impact will becoming a Contracting State to the Convention have in your jurisdiction (i.e. in England and Wales, in Scotland or in Northern Ireland)?

Q5: What downsides do you consider would result from the UK becoming a Contracting State to the Convention? Please expand on the perceived severity of these downsides.

Q6: Are there any aspects or specific provisions in the Convention that cause concern or may have adverse effects from a UK perspective?

Chapter 4: Implementation of Hague 2019 in the UK

Registration model

4.1 Under the Convention the procedure for recognition and enforcement in the requested State is a matter for that State (as per Article 13 and see the explanatory report §§307–318). In the Civil Jurisdiction and Judgments Act 1982 that implements the Hague 2005 Convention (amongst other things) a registration requirement was created (see s.4B of the 1982 Act). As the Act has previously followed a registration requirement the UK is likely to continue to use a registration system as this will enable a clear process to monitor the number of requests being made under the Convention and establish a process for their handling by the courts and competent authorities.

Q7: Do you have a view on whether the Convention should be implemented using a registration model for the purpose of recognition and enforcement of judgments from other Contracting States?

4.2 The Convention raises that it is a matter for domestic implementation that a judgment cannot circulate (and so does not proceed to the tests for refusal under Article 7) unless and until it fulfils an indirect jurisdictional ground under Article 5 (“A judgment is eligible for recognition and enforcement if one of the following requirements is met”). Should the UK accede, that matter would be judged, therefore, not by the court of origin giving the judgment, but by the UK’s courts where a request for recognition and enforcement is made under the Convention. For the purposes of domestic implementation, consideration will be needed of how the need for a court to test the indirect jurisdiction element should be built into the process. Should a registration process be established it could form part of that i.e. that the requesting party must set out the relevant indirect jurisdictional ground, which the court must be satisfied of.

Q8: Do you have a view on how the Convention should be implemented for the purposes of establishing how indirect jurisdictional grounds should be established by the relevant domestic court?

Declarations

4.3 Hague 2019 allows Contracting States to make a number of declarations (Articles 14,17,18,19) which are set out below.

4.4 A declaration provides Contracting States with the opportunity to clarify or limit the scope of an agreement which applies in their State. A declaration is an optional clause often included in multilateral treaties which allow Contracting States to unilaterally opt in or out of specific clauses.

Article 14

Costs of proceedings

4.5 Paragraph 1 of Article 14 states that “no security, bond or deposit is needed by a party in a Contracting State when applying for the enforcement of a judgment provided by a court in another contracting state.”

4.6 Paragraph 3 of Article 14 sets out a declaration relating to paragraph 1 (as above). This means that, should a Contracting State elect to make a declaration under this provision, the state could feasibly request payment, including in the form of a deposit when applying for the enforcement of a judgment.

Article 17

Declarations limiting recognition and enforcement:

4.7 Article 17 says that a State “may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State.”

4.8 This allows states to declare that they will not apply the Convention when the situation which gave rise to the dispute and hence the judgment, was considered ‘internal’ by the requested State.

4.9 An ‘internal’ situation means that all parties were living in the requested State and that all relevant circumstances of the dispute were also located in that state. The reason for this provision is that if the case is internal to the requested State, there are no justifications for the parties to seek the recognition or enforcement of a judgment in another state.¹⁴

4.10 Instruments under the Hague Conference generally only apply to international cases. A judgment given in a domestic case (e.g. where both parties are in the same jurisdiction) might later become international for the purposes of recognition and enforcement if, for example, one of the parties later moves to another country or

¹⁴ [BW_NIPR_01_2020_v3.indb \(Comment on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, Catherine Kessedjian\)](#)

assets are found in another country against which the judgment can be enforced. Yet there may be scenarios where the internationality of the case has been engineered by the parties, for example by setting up an address in a country with the sole purpose of being able to seize the courts there.

4.11 Article 17 recognises that such a case may not be a true international case, and that, on a proper analysis of the connecting elements of the dispute, the dispute ought to have been heard in the requested State. States may make a declaration to address such scenarios.¹⁵

Article 18

Declarations with respect to specific matters

4.12 Article 18 of the Convention specifies that a Contracting State may elect to not apply the Convention to a specific area of law.

4.13 Paragraph 2 of Article 18 highlights that the Convention shall not apply in the state that made the declaration. As well as this, the Convention shall not apply in states where the recognition and enforcement of a judgment is sought by states who have made the declaration due to reciprocity.

4.14 This provision facilitates the ratification of the Convention by “relaxing” its scope of application. If such opt-outs were not possible, it was considered that some States may be reluctant to become Parties to the Convention.¹⁶

Article 19

Declarations with respect to judgments pertaining to a State

4.15 This provision provides Contracting States with the opportunity to make a declaration which excludes the application of the Convention to judgments that originate from proceedings to which a particular state is a party.

4.16 For example, if State A has made a declaration under Article 19 to exclude any judgment that results from proceedings to which that State is a party, a judgment given in State B against State A will not be recognised or enforced in State A under Hague 2019.

4.17 While the Convention applies only to civil or commercial matters it can sometimes be unclear in PIL instruments whether that excludes the actions of the State when exercising sovereign powers. In addition, during the negotiations some delegations felt that the preservation of immunities in Article 2(5) might be insufficient to protect State interests. Article 19 responds to these concerns by allowing States to make a

¹⁵ [a1b0b0fc-95b1-4544-935b-b842534a120f.pdf \(hcch.net\)](#) (HCCH Explanatory Report – §323)

¹⁶ [a1b0b0fc-95b1-4544-935b-b842534a120f.pdf \(hcch.net\)](#) (HCCH Explanatory Report – §336)

declaration excluding the application of the Convention to judgments that arose from proceedings to which such a State was a party.¹⁷

4.18 Applying declarations to the Convention can undermine its purpose and objectives. It is also important to note that should the UK adopt any of the declarations listed above, other Contracting States may do the same, which could impact upon how the Convention operates for UK based parties in those States.

Reservations

4.19 Hague 2019 does not contain any provision preventing reservations being made. This means that reservations are permitted, subject to the rules of international law which are reflected in the Vienna Convention on the Law of Treaties of 1969.¹⁸

4.20 A reservation is a declaration made by a State upon signing or ratifying a treaty. This allows said State to reserve the right not to abide by certain provisions of the treaty.¹⁹ This may include a State electing not to apply the convention with another contracting State.

4.21 The Convention of 1969 says that a State may, when signing and ratifying a treaty, make a reservation except if: (a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not failing under (a) and (b), the reservation is incompatible with the object and purpose of the treaty.²⁰

4.22 At the time of writing, Russia is carrying out an unprovoked, premeditated attack against Ukraine. This has led the government to consider whether the UK should make a reservation under Hague 2019 against applying the convention with Russia. It should be noted that the UK would be able to repeal any reservation made in respect of Russia should circumstances change significantly in the future.

¹⁷ [a1b0b0fc-95b1-4544-935b-b842534a120f.pdf \(hcch.net\)](#) (HCCH Explanatory Report – §344)

¹⁸ [a1b0b0fc-95b1-4544-935b-b842534a120f.pdf \(HCCH Explanatory Report\)](#), the report provides that reservations are permitted, subject to the normal rules of customary international law (as reflected in Art. 2(1)(d) and Arts 19-23 of the Vienna Convention of 1969)

¹⁹ <https://ask.un.org/faq/139887#:~:text=A%20reservation%20is%20a%20declaration,on%20the%20Law%20of%20Treaties>. (UN)

²⁰ [Vienna Convention Law Treaties \(oas.org\)](#)

Q9: In your view, are there any declarations which the UK should make? If so, why?

Q10: What do you consider would be the legal or practical implications of the UK applying the reservation suggested in relation to the Russian Federation (paragraph 4.22)? It should be noted that it would always be possible to repeal such a reservation in the future.

Chapter 5: Territorial Extent

- 5.1 This is a UK-wide consultation which covers all 3 legal jurisdictions of the United Kingdom including England and Wales, Scotland and Northern Ireland. The operation of PIL in Scotland and Northern Ireland is the responsibility of the administrations there (the Welsh Government does not have devolved responsibility in this area). While the responsibility for signing up to an international convention resides with the UK Government, implementation would be needed in all three legal jurisdictions of the UK.
- 5.2 Under Article 22(2) of the Convention, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units. This means that Hague 2019 would not apply to recognition and enforcement of judgments between the legal jurisdictions of the UK, for example an English judgment in Scotland – the recognition and enforcement obligations under the Convention only arise with respect to foreign judgments, understood in the international sense.
- 5.3 Article 22(3) states that “a court in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a judgment from another Contracting State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.” This leaves discretion to, for example a Scottish Court not to recognise a foreign judgment that has been recognised by an English Court.
- 5.4 The long-standing practice of the UK when it ratifies a treaty, is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and such (if any) of its territories as wish the treaty to apply to them. In relation to the Convention, the UK Government, with the agreement of the Scottish Government and the Northern Ireland Executive, would propose to ratify the treaty on behalf of the UK as a whole. This reflects that points arising in relation to the Convention are similar across the UK.
- 5.5 Should the UK sign and ratify Hague 2019, the Crown Dependencies and the Overseas Territories (both the Crown Dependencies and the Overseas Territories are constitutionally separate from the UK) could elect to have the treaty extend to their jurisdictions.

Chapter 6: Parliamentary Scrutiny and Procedure

- 6.1 If the UK Government decides, having given careful consideration to all of the representations received in response to this consultation, that the UK should sign and ratify the Convention, then it would be implemented using powers in the Private International Law (Implementation of Agreements) Act 2020.²¹ A single instrument may cover the whole of the UK but this is subject to the agreement of the Devolved Administrations. It would be subject to the normal parliamentary scrutiny procedures, as well as provisions of the Constitutional Reform and Governance (CRaG) Act 2010 that establishes certain procedural requirements for all international agreements that the UK joins.
- 6.2 It should be noted changes may be necessary to the court rules in all three UK jurisdictions. In England and Wales the Civil Procedure Rule Committee considers changes that are needed to the Civil Procedure Rules used in the Civil Division of the Court of Appeal, the High Court and the County Court. Once approved by the Committee they are submitted to the Lord Chancellor. In Scotland, the Court of Session makes Rules of Court in an Act of Sederunt. In line with usual practice, the Scottish Government, working with the UK Government, will prepare a policy paper for the Scottish Civil Justice Council on any rules of court that may be required.²²
- 6.3 In relation to Northern Ireland, amendment of court rules will also be required to support implementation. Court rules are made by a Rules Committee comprising members of the judiciary and the legal profession, subject to being allowed by the Department of Justice.

²¹ <https://www.legislation.gov.uk/ukpga/2020/24/contents/enacted>

²² [Scottish Civil Justice Council](#)

Chapter 7: The Consultation

- 7.1 This consultation is intended to gather expert views from practitioners, academics, businesses, and any other persons with an interest in or who may be affected by cross-border civil and commercial litigation in the UK. In addition to analysing responses to this consultation, officials will engage with relevant experts, including the Lord Chancellor's Advisory Committee on Private International Law, prior to publishing the results of this consultation.
- 7.2 Based on the overall analysis, the Government will make a final decision on signing and ratifying and any declarations to be made, and commence the necessary processes to ensure that this can be achieved within a reasonable timescale, in consultation with the Devolved Administrations.
- 7.3 The Convention would be implemented in UK domestic law under the terms of the Private International Law (Implementation of Agreements) Act 2020, subject to appropriate parliamentary scrutiny. The Convention would enter into force for the UK 12 months after the date it deposits its instrument of ratification.

Chapter 8: Questions

Q1: Should the UK accede to Hague 2019? Please provide your reasoning. What do you expect the added value to be for the UK upon accession?

Q2: Is this the right time for the UK to consider Hague 2019? Are there any reasons why you consider now would not be the right time for the UK to become a Contracting State to the Convention?

Q3: What impact do you think becoming a Contracting State to the Convention will have for UK parties dealing in international civil and commercial disputes?

Q4: What legal impact will becoming a Contracting State to the Convention have in your jurisdiction (i.e. in England and Wales, in Scotland or in Northern Ireland)?

Q5: What downsides do you consider would result from the UK becoming a Contracting State to the Convention? Please expand on the perceived severity of these downsides.

Q6: Are there any aspects or specific provisions in the Convention that cause concern or may have adverse effects from a UK perspective?

Q7: Do you have a view on whether the Convention should be implemented using a registration model for the purpose of recognition and enforcement of judgments from other Contracting States?

Q8: Do you have a view on how the Convention should be implemented for the purposes of establishing how indirect jurisdictional grounds should be established by the relevant domestic court?

Q9: In your view, are there any declarations which the UK should make? If so, why?

Q10: What do you consider would be the legal or practical implications of the UK applying the reservation suggested in relation to the Russian Federation (paragraph 4.22)? It should be noted that it would always be possible to repeal such a reservation in the future.

Q11: While both Hague 2019 and the 2007 Lugano Convention provide a framework for recognition and enforcement of civil and commercial judgments, what drawbacks, if any, do you foresee if the UK were to apply only Hague 2019 with EU/EFTA States, given its narrower scope and lack of jurisdiction rules? Please provide practical examples of any problems.

Q12: Do you consider that the UK becoming party, or not becoming party, to the Hague 2019 Convention would have equalities impacts in regards to the Equalities Act 2010?

Q13: Would you foresee any intra-UK considerations if the Hague 2019 was to be implemented in only certain parts of the UK?

Q14: What other comments, if any, do you have?

Chapter 9: About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Chapter 10: Contact details/How to respond

Please send your response to:

Email: PIL@justice.gov.uk

Alternatively, you can send responses by **post** to:

Private International Law
International Justice Policy Division
Ministry of Justice
9th Floor
102 Petty France
London SW1H 9AJ

Complaints or comments

10.1 If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

10.2 Further paper copies of this consultation can be obtained from this address and it is also available on-line at [GOV.UK](https://www.gov.uk).

10.3 Alternative format versions of this publication can be requested from PIL@justice.gov.uk

Publication of response

10.4 A paper summarising the responses to this consultation will be published in spring 2023. The response paper will be available on-line at [GOV.UK](https://www.gov.uk).

Representative groups

10.5 Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

- 10.6 By responding to this consultation, you acknowledge that your response, along with your name/corporate identity will be made public when the Department publishes a response to the consultation in accordance with the access to information regimes (these are primarily the Freedom of information Act 2000(FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).
- 10.7 Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the Department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be 'forgotten' under data protection legislation, if the Department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public'). Alternatively, you may choose not to respond.

Accessibility

- 10.8 The Department will provide an accessible version of the consultation to respondents upon request. The Consultation will be open for a period of 8 weeks, however, should you require more time to respond please contact PIL@justice.gov.uk.

Chapter 11: Impact Assessment, Equalities and Welsh Language

Impact assessment

11.1 A formal impact assessment has not been prepared because this consultation does not give rise to further actions that can be costed.

Equalities

11.2 We do not envisage that this consultation on whether the UK should become a Party to the Convention results in people being treated less favourably because of any protected characteristic, and therefore our assessment is that the proposal to sign and ratify is not directly discriminatory within the meaning of the Equality Act 2010.

11.3 We also do not consider that any ratification of the Convention will amount to indirect discrimination within the meaning of the Equality Act 2010.

11.4 When considering specific policy proposals that might arise following this consultation, we will update our equality considerations in light of the consultation responses.

Welsh Language Impact Test

11.5 In line with guidance set out in the MoJ Welsh Language Scheme, we do not consider it necessary to translate this document into Welsh.

11.6 We do not believe that the ratification of Hague 2019 will impact on the use of the Welsh language in Wales.

Chapter 12: Consultation principles

- 12.1 The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A

The full list of members of the Hague Conference on Private International Law can be found below:

- Albania
- Andorra
- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Belarus
- Belgium
- Bosnia and Herzegovina
- Brazil
- Bulgaria
- Burkina Faso
- Canada
- Chile
- China
- Costa Rica
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Estonia
- European Union
- Finland
- France
- Georgia
- Germany
- Greece
- Honduras
- Hungary

- Iceland
- India
- Ireland
- Israel
- Italy
- Japan
- Jordan
- Kazakhstan
- Latvia
- Lithuania
- Luxembourg
- Malaysia
- Malta
- Mauritius
- Mexico
- Monaco
- Mongolia
- Montenegro
- Morocco
- Namibia
- Netherlands
- New Zealand
- Nicaragua
- North Macedonia
- Norway
- Panama
- Paraguay
- Peru
- Philippines
- Poland
- Portugal
- Republic of Korea
- Republic of Moldova
- Romania
- Russian Federation
- Saudi Arabia
- Serbia
- Singapore
- Slovakia
- Slovenia

- South Africa
- Spain
- Sri Lanka
- Suriname
- Sweden
- Switzerland
- Thailand
- Tunisia
- Turkey
- Ukraine
- United Kingdom of Great Britain and Northern Ireland
- United States of America
- Uruguay
- Uzbekistan
- Venezuela (Bolivarian Republic of)
- Viet Nam
- Zambia

Annex B

Hague-19 does not apply to the following civil and commercial judgments as per Article 2 of the Convention:

- The status and legal capacity of natural persons;
- Maintenance obligations;
- Other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
- Wills and succession;
- Insolvency, composition, resolution of financial institutions, and analogous matters;
- The carriage of passengers and goods;
- Transboundary marine pollution, marine pollution in areas beyond national jurisdiction, ship-source marine pollution, limitation of liability for maritime claims, and general average;
- Liability for nuclear damage;
- The validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;
- The validity of entries in public registers;
- Defamation;
- Privacy;
- Intellectual property;
- Activities of armed forces, including the activities of their personnel in the exercise of their official duties;
- Law enforcement activities, including the activities of law enforcement personnel in the exercise of their official duties;
- Anti-trust (competition) matters, except where the judgment is based on conduct that constitutes an anti-competitive agreement or concerted practice among actual or potential competitors to fix prices, make rigged bids, establish output restrictions or quotas, or divide markets by allocating customers, suppliers, territories or lines of commerce, and where such conduct and its effect both occurred in the State of origin;
- Sovereign debt restructuring through unilateral State measures.
- This Convention shall not apply to arbitration and related proceedings.
- Privileges and immunities of States or of international organisations, in respect of themselves and of their property.

Annex C

Article 7

Refusal of recognition and enforcement

1. Recognition or enforcement may be refused if –

(a) the document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim –

(i) was not notified to the defendant in sufficient time and in such a way as to enable them to arrange for their defence, unless the defendant entered an appearance and presented their case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or

(ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;

(b) the judgment was obtained by fraud;

(c) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State and situations involving infringements of security or sovereignty of that State;

(d) the proceedings in the court of origin were contrary to an agreement, or a designation in a trust instrument, under which the dispute in question was to be determined in a court of a State other than the State of origin;

(e) the judgment is inconsistent with a judgment given by a court of the requested State in a dispute between the same parties; or

(f) the judgment is inconsistent with an earlier judgment given by a court of another State between the same parties on the same subject matter, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

2. Recognition or enforcement may be postponed or refused if proceedings between the same parties on the same subject matter are pending before a court of the requested State, where –

(a) the court of the requested State was seised before the court of origin; and

(b) there is a close connection between the dispute and the requested State.

A refusal under this paragraph does not prevent a subsequent application for recognition or enforcement of the judgment.



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