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of Justice

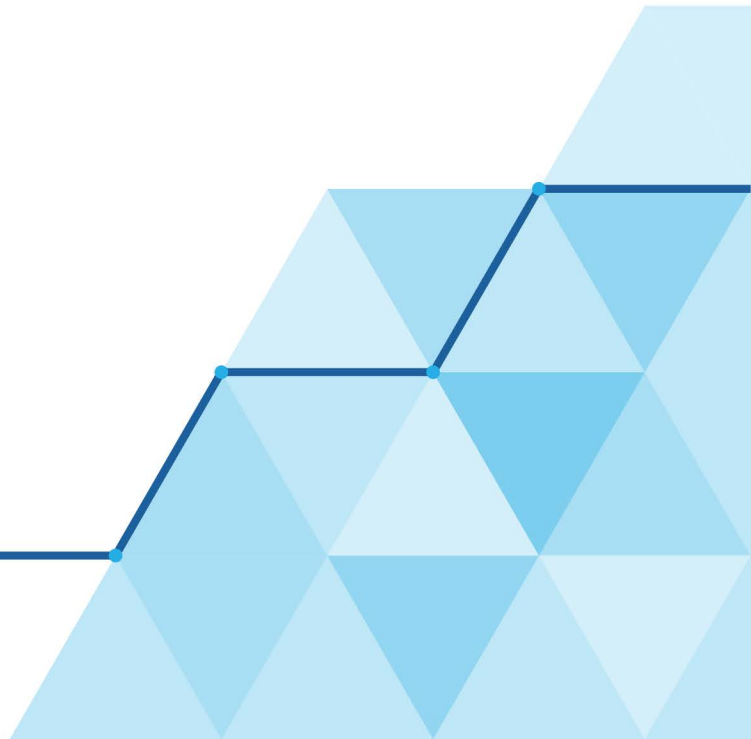
The Singapore Convention on Mediation

**The United Nations Convention on
International Settlement Agreements
Resulting from Mediation
(New York, 2018)**

Consultation Response

March 2023

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The United Nations Convention on International
Settlement Agreements Resulting from Mediation
(New York, 2018)

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Response to consultation carried out by the Ministry of Justice.

This information is also available at <https://consult.justice.gov.uk/>

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1. Introduction

This is the Government’s response to the consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the “Singapore Convention on Mediation”).

It covers:

- the background to the response
- a summary of the responses to the consultation
- a detailed response to the specific questions raised in the consultation
- the next steps following this consultation

Contact Details

Further copies of this report and the consultation paper can be obtained by contacting the Private International Law Strategy and Implementation Team at the address below:

International Justice Policy Division
Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: PIL@justice.gov.uk

This report is also available at <https://consult.justice.gov.uk/>

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

Complaints or comments

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

2. Background

- 2.1 This document sets out the Government's response to the consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation" or "the Convention"), which ran from 2 February to 1 April 2022 ("the Consultation").
- 2.2 The Consultation sought views on whether the United Kingdom (UK) should become party to this Convention and if so, how to implement it in UK domestic law. The Consultation also sought views on whether the UK's reputation as an international seat for arbitration, and a preferred seat for other forms of international dispute resolution, would be further strengthened by joining the Convention. It outlined the Government's view that the Convention could present opportunities to establish new relationships in the Indo-Pacific, Middle East, and Africa, as well as strengthening our existing relationships with key trading partners, including fellow Commonwealth nations, many of whom are already signatories.
- 2.3 The Consultation set out the feedback from a previous focused, limited, and informal consultation on the Convention conducted by the Ministry of Justice in the autumn of 2019. It also indicated that in the event that the Government decides that the UK should become a Party to the Convention, it would be implemented in UK domestic law under the provisions of the Private International Law (Implementation of Agreements) Act 2020.
- 2.4 The Consultation period closed on 1 April 2022 and the Government is grateful to the organisations and individuals who took the time to respond. This document summarises the views expressed in relation to the questions asked and sets out the Government's response and policy decisions in the light of those views.
- 2.5 [Annex A](#) provides a breakdown of the categories of respondents.

3. Summary of responses

- 3.1 A total of 20 responses to the Consultation were received. These were from professional associations, legal practitioners, and academics from across the UK.
- 3.2 Responses were analysed to assess the level of support within the legal sector for the UK joining the Singapore Convention on Mediation and to assess what impacts respondents identified.
- 3.3 The majority of respondents were of the view that the UK should become a Party, to raise the profile of mediation, to maintain the UK's position as an attractive centre for dispute resolution and to signal the UK's ambition to remain a global leader in Private International Law. Respondents also indicated that in signing and ratifying the Convention, the UK would be able to contribute to the development of the interpretation of the Convention's provisions through judgments given on the Convention by UK courts.
- 3.4 Of the 20 respondents to the consultation, two concluded that the UK should not sign and ratify the Convention at this time. It was noted that outside of the UK reaffirming its position as a hub for dispute resolution, there are limited benefits in the UK becoming Party to the Convention as there are already effective mechanisms for enforcing settlement agreements in the UK. Whilst some other respondents did also express this sentiment, in weighing up whether the UK should accede to the Convention, the UK reaffirming its position as a hub for dispute resolution was regarded as the most important reason to sign and ratify the Convention by most of the respondents.

4. Responses to Consultation Questions

This section provides a more detailed summary of the responses to each question from the respondents to the consultation. It highlights the main issues raised but is not an exhaustive commentary on every response received and does not represent the Government's view, which is laid out in the Conclusions and Next Steps section below.

Q1: Do you consider that this is the right time for the UK to become a Party to the Convention (i.e. to sign and ratify as set out in 2.10 of the consultation)?

- 4.1 There were 20 responses to this question. The majority of respondents stated that it **is the right time** for the UK to sign and ratify the Singapore Convention on Mediation. The main reasons given were that this would:
- signal the UK's commitment to Alternative Dispute Resolution;
 - enhance the UK's status as an attractive international dispute resolution hub;
 - increase the credibility of UK based mediators.
- 4.2 Respondents also mentioned that it would enhance the credibility of mediation and promote the wider use of mediation as an internationally recognised and viable option for commercial dispute resolution. It was noted that if the UK signed and ratified, it would likely encourage other States to do the same. One respondent stated that the UK should sign and ratify as soon as possible in order to assume a global influencer role and be a front runner in the development of international mediation. It was suggested that not signing up to the Convention may undermine the UK's status as a leading mediation centre, with another respondent stating that the UK should not be seen to be lag behind other countries. Another respondent noted that the numbers of countries that had already signed and were applying the Convention suggested that the UK should join as soon as possible, with another describing them as 'promising' numbers.
- 4.3 Respondents noted the practical benefits of joining the Convention, stating that it would provide certainty on the enforceability of international commercial settlement agreements, and the non-reciprocal nature of the Convention would allow jurisprudence to form in the UK on those mediated settlements and international cross-border mediation standards. However, some concerns were also raised that the development of such jurisprudence and the increased involvement of lawyers could actually make enforcement more difficult. One respondent, in favour of joining the Convention, stated that any concerns they may have centre around how it might

be implemented and whether this might restrict those who currently practice mediation by adopting an overly legalistic approach.

- 4.4 Two respondents stated that the UK **should not** sign and ratify the Convention, for the following reasons:
- there are limited benefits in the UK joining the Convention beyond the signals it would give as to the UK's supportive position on the 'important role that mediation can play in the resolution of cross-border and domestic commercial disputes';
 - the non-reciprocal nature of the Convention means that a settlement agreement mediated in English Law could be enforced in another jurisdiction under the Convention. 'Parties to English law governed settlement agreements may take the view that the English courts (or a London seated arbitral tribunal) should determine disputes as to whether their English law governed settlement agreement should be enforced. They may not want these disputes to be determined by other Convention State courts because it may be more time consuming and costly than litigating the dispute in England (not least because it may require the parties to submit expert evidence on English law) and because it may increase the risk of an unexpected outcome (for example, because other Contracting States may apply different public policy rules)';
 - the broad definition of mediation within the Convention may lead to inconsistency between Convention states.

Q2: What impact do you think becoming Party to the Convention will have for UK mediation and mediators?

- 4.5 There were 14 responses to this question. The majority of respondents stated that becoming a Party to the Convention would reinforce the UK's position as a hub for dispute resolution and raise the profile of mediation as a viable dispute resolution method, thereby potentially increasing the use of mediation in international disputes.
- 4.6 Respondents stated that it would send a positive message regarding mediation, provide legal certainty to the mediation process, and promote UK-based mediation and mediators alongside the UK's reputation as a seat for arbitration. It could strengthen the reputation of England & Wales as the jurisdiction of choice for dispute resolution and have a positive effect on the mediation market.
- 4.7 Other positive responses to this question were that:
- the Convention presents opportunities for the UK to bolster its position in this area by taking a leading role in the future development of law and practice;
 - the UK ratifying could encourage others to sign up;

- it may modernise the law on mediation as the Convention will ensure that the law in this area is as up to date as possible;
- it could act as a gateway to international cooperation in developing standards in mediation, as well as adding trust and legitimacy to mediation, both domestically and internationally.

4.8 Another respondent noted that becoming Party to the Convention would raise the profile of, and create more business with regards to, small commercial disputes but would have no impact on large scale commercial disputes.

4.9 One respondent recommended that the Ministry of Justice establish a centralised data recording mechanism to improve data recording capabilities within the mediation sector in the UK, and that this would help the sector to better assess the impact of becoming a Party to the Convention, with numerical proof or statistics to back up comments.

Q3: What impact do you consider the Singapore Convention would have on the UK mediation sector and particularly on the enforceability of settlement agreements?

4.10 There were 14 responses to this question, with the majority of respondents indicating that the Convention would have a positive impact.

4.11 On enforceability, four respondents stated that the impact would be more significant on the process for enforcing settlement agreements than on improving the overall ability to enforce them in the UK. These comments noted that:

- the substantive legal position would not alter significantly as enforceability is not generally an issue for international mediated agreements;
- Whilst mediated settlement agreements can be enforced in a contracting party without the UK joining the Convention 'there is merit in opting into a uniform global system for international commercial mediation which provides a common understanding, approach and certainty to potential parties and their advisors (in a similar way to the New York Convention)';
- the Convention would give parties another process choice and may reduce costs and decrease the time lags associated with the recognition and enforcement of settlement agreements;
- the expedited process would improve user perceptions of mediation and lead to heightened confidence in the use of UK mediation, for both simple and complex cross-border commercial disputes.

- 4.12 Further responses on the impact on the mediation sector stated that:
- the Convention might prompt the sector to reconsider the standards of practice required internationally and may lead to a more integrated dispute resolution system in the UK, including more potential for learning from other jurisdictions;
 - it may increase the use of mediation and see an expansion of mediation services;
 - if mediation practice is adopted worldwide, then the UK's position as a dispute resolution hub would be highlighted, as would the recognition that UK mediators are among the best internationally, but the short-term impact would be small.
- 4.13 Another respondent noted that the broad definition of mediation means that the Convention could apply to settlement agreements resulting from a number of mediation practices, such as mandatory mediation, court-ordered mediation, and evaluative mediation and so, if the UK joined the Convention, the courts in the UK would need to be ready to accept such variety of mediated settlement agreements without placing domestic conditions.

Q4: What impact do you think becoming Party to the Convention might have on other forms of dispute resolution?

- 4.14 There were 13 responses to this question. **All respondents** expressed the view that the Convention would have a **positive effect** on the dispute resolution sector and other forms of dispute resolution. Respondents stated that the reputation of mediation would be enhanced, as would the perception of other forms of dispute resolution and may be seen as a quick and affordable additional resource. It may make early mediation more attractive and complement other forms of dispute resolution, including the use of mediation within arbitration and other hybrid forms of dispute resolution.
- 4.15 Positive comments included:
- the inclusion of mediation for the resolution of international disputes has only strengthened London's place as a hub for international dispute resolution;
 - the Convention could support the attractiveness of UK courts as a forum to bring commercial claims;
 - the Convention, and its promotion of mediation, could help to reduce the burden on the UK Court Service due to traditional litigation;
 - the common law approach requires parties to enforce settlement agreements as contracts, whereas the Convention would lead to a specialised and expedited enforcement process and would therefore improve user perception of mediation and mitigate enforceability concerns in the UK.

- 4.16 Two respondents indicated that mediation is more frequently used to resolve small-medium sized disputes which are too cost-inefficient to take to adjudication or arbitration.
- 4.17 One respondent stated that if becoming Party to the Convention results in mediation being used more frequently to resolve small and mid-sized disputes, they would expect to see a decrease in the number of these disputes being resolved by the courts and arbitral tribunals, but that they did not expect any decrease to be significant. This respondent stated that becoming a Party would have a more significant impact on the role of the courts in enforcing settlement agreements, specifically:
- i. judges would be required to take a new approach to enforcing settlement agreements falling within the scope of the Convention; and
 - ii. the courts may have to deal with applications to enforce settlement agreements falling within the scope of the Convention in circumstances where, absent the Convention, the English courts would not have had jurisdiction to hear a dispute under that agreement.
- 4.18 One respondent suggested that the Convention could have some impact in the arbitration context, where a mediated settlement could not be converted into an arbitral award, or where enforcement of such a consent award under the 1958 New York Convention on Arbitration¹ would be problematic, which may lead to a decrease in the number of cases being brought under the New York Convention.
- 4.19 One respondent indicated that the impact of the Convention would be dependent on the legal traditions of disputing parties and how mediation develops on a global scale regarding outcomes, effectiveness, and cost in comparison to arbitration and court proceedings.

Q5: What legal impact will becoming Party to the Convention have in your jurisdiction (i.e. in England and Wales, in Scotland or in Northern Ireland)?

- 4.20 There were 14 responses to this question, 11 in the jurisdiction of England and Wales, two from Scotland and one from Northern Ireland. The majority of respondents stated that although some legislative changes may be necessary and that case law will, in time, assist the application of the Convention in the UK, the legal impact would be somewhat limited given the existing provisions in respective UK jurisdictions for enforcing mediated settlement agreements.

¹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention") https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards

- 4.21 The majority of the 11 respondents whose jurisdiction was England and Wales indicated that the legal impact would be limited, after an initial settling down period to get used to the parameters set by the Convention, as the substantive legal position would not alter significantly. They indicated that it may improve procedural efficiency, assist lawyers advising their clients in international mediations and reduce legal litigation. Respondents also commented that the Convention could promote the attractiveness of the courts of England and Wales and choice of law clauses pointing to England and Wales, and make it easier to achieve a legal remedy and expedite the enforcement of mediated agreements.
- 4.22 One respondent in England and Wales stated that the Convention would open a direct route to enforcement of a contract, without first obtaining a judgment or arbitral award. They noted that the procedural gateways for bringing such enforcement proceedings would need to be tightly framed and would require scrutiny. It was stated that this process could mirror existing mechanisms for enforcing settlement agreements, so may create a parallel regime. The respondent stated that a new body of case law on the applicability of the Convention was likely to arise.
- 4.23 Only one respondent stated that the legal impact of the UK becoming a Party to the Convention would be 'quite radical' in England and Wales given that it would create a new mechanism for enforcing a mediated settlement agreement.
- 4.24 With regards to respondents whose jurisdiction was Scotland, one respondent noted that legislative actions must be taken in terms of mediation in general, written requirements and the standards required in practice for clarity as to the Convention's application. Cultural and linguistic factors should also be factored in. Without them, the interpretations of the Convention would become a breeding ground for ancillary disputes.
- 4.25 In addition to respondents from England and Wales, it is also noted that a respondent from Scotland commented on the potential significance of Article 4 of the Convention as it allows a direct route to enforcement of a contract, without first obtaining a judgment or arbitral award. The respondent did state that direct enforcement of a contract is not a novel concept in Scotland. In Scotland, if a deed contains a clause where the parties' consent to 'registration for preservation and execution' in the Books of Council and Session and is so registered, the extract (official copy) from the Registers of Scotland will contain a warrant that grants authority for lawful execution. This is the equivalent to a decree from the Court of Session and can be used as the basis for summary diligence in certain scenarios. New court procedures will be necessary for parties who do not adopt registration for preservation and execution. The respondent stated, however, that the overall legal impact of becoming Party to the Convention in Scotland is likely to be small.

- 4.26 In respect of Northern Ireland, respondents noted that the jurisdiction has the only UK land border with the European Union (EU) and therefore might involve local commercial entities in dispute with Ireland or other EU countries. It was stated that being a signatory to the Convention would provide clarity that the UK is committed to mediation and to upholding agreements reached in such a dispute resolution process. It was also considered important for Northern Ireland to remain in step with the rest of the UK, in its approach to joining the Convention.

Q6: What might be the downsides of the UK becoming Party to the Convention?

- 4.27 There were 14 responses to this question, with eight respondents stating that there are either no downsides or “no obvious downsides”. One respondent stated that although they didn’t consider there to be any obvious downsides to the UK becoming a party, given the low number of ratifying states, there is relatively little commentary or case law illustrating the potential issues which may arise in the implementation of the Convention. This respondent suggested that the UK may wish to consider making a reservation to the Convention in accordance with Article 8(1)(b) of the Convention, in order to make available the benefits of the Convention while also preserving the freedom of parties to determine the enforcement framework applicable to their settlement agreements.
- 4.28 One respondent strongly expressed a negative view of the Convention, as an unnecessary additional mechanism for enforcing mediated settlement agreements, on the following grounds:
- a lesser degree of legal scrutiny/oversight may be given to settlement agreements as compared to judgments or arbitral awards;
 - the same checks and balances that apply in litigation or arbitration would not necessarily apply during mediation negotiations between private parties;
 - settlement agreements can be significantly more complex than a judgment or arbitral award and their interpretation may be more nuanced;
 - therefore, the enforcement process will be complex, and there are no reasons why grounds to enforce or refuse enforcement of settlement agreements should be substantively different;
 - existing mechanisms are effective and allow for expedited enforcement;
 - the terms of some settlements may not be directly enforceable by an English court.
- 4.29 Other respondents also expressed concerns on the application of the Convention given global inconsistencies in mediator standards, documentation issued in other jurisdictions and confidentiality. One respondent stated that published standards may vary in different countries and questions may arise as to whether UK courts

could trust the accuracy of documents issued by institutions across the world. Another respondent stated that differing approaches to mediation confidentiality globally could pose at least a technical risk of the 'veil of confidentiality being lifted by foreign enforcing courts beyond the very limited circumstances expected by parties mediating in the UK without a prejudice rule.'

- 4.30 Some respondents also expressed concerns that the direct enforceability of mediated agreements could result in the courts being asked to enforce terms which as a matter of the law of English and Wales, the court is unable to order the parties to perform. Or the Convention might place the courts in a position where they are obliged to enforce but have no power to grant the remedy required, for instance in circumstances where specific performance is sought but would not usually be ordered. It was noted that there are safeguards built into the Convention at Article 5 to prevent enforcement, for example where the agreement is incapable of being performed or where granting relief would be contrary to public policy. This respondent stated that the grounds on which the court can refuse to grant relief will need to be tested and a body of case law developed.
- 4.31 One respondent noted that the UK would not have the opportunity to narrow the scope of mediation in regard to enforceability and its definition under the Convention.
- 4.32 Another respondent noted that there is no equivalent of an arbitral seat under the Convention. This respondent considered that there is some scope for tactical proceedings by parties who purport to enforce the mediation settlement agreement. For example, a party whose mediated settlement agreement has not been enforced in a certain jurisdiction is free to initiate enforcement in other/multiple jurisdictions where the other party holds assets. There is no intrinsic mechanism in the Convention to stop these proceedings from being conducted in parallel. The respondent caveated this view, however, by stating that it would be a minority of cases which would seek judicial help with enforcement, as mediated settlement agreements are entered into freely and on the basis of consensus.
- 4.33 One respondent stated that making mediation settlement agreements directly enforceable elevates what is essentially a private contract to a status which aligns it with a court decree or arbitral award. This respondent stated that some commercially and legally sophisticated parties may wish to opt out of the Convention when entering into settlement agreements to which it might apply.
- 4.34 Two respondents stated that there is the potential for satellite litigation about what constitutes mediation and on provisions concerning mediator misconduct and conflicts of interest, which could introduce greater uncertainty and unpredictability for UK mediating parties. It was stated that the drafting of legislation/rules should

carefully consider whether it is desirable and possible to clarify the UK position on some of the aspects of the Convention where there is scope for ambiguity or different approaches.

Q7: Are there any specific provisions which cause concern or that may adversely affect the mediation sector in the UK? For example, the broad definition of mediation in the Convention's text?

- 4.35 There were 13 responses to this question with the majority of respondents stating that there are **no specific provisions** which cause concerns or would adversely affect the UK mediation sector. The majority of respondents expressed the view that the broad definition of mediation is not a cause for concern and should not be a reason for the UK to not sign and ratify the Convention, particularly given the consensual nature of mediated agreements.
- 4.36 The following concerns were expressed by a minority of respondents about lack of clarity:
- that the broad definition of mediation in the Convention may be undesirable to endorse in the absence of further clarity;
 - that it may also be unclear when a settlement agreement can be said to have resulted directly from mediation;
 - that there may be difficulties in distinguishing a mediated settlement agreement from other forms of settlement agreement.
- It was suggested that these issues may be easily resolvable through case law.
- 4.37 The following further points were raised concerning Article 5 (1):
- it is not clear whether a jurisdiction clause would be sufficient in preventing another Convention State court from enforcing the settlement on the basis that granting relief would be contrary to the terms of the settlement agreement;
 - how Article 5(1) would operate in cases where an enforcing court is faced with party disagreement over how the terms of the agreement should be interpreted.
- 4.38 A respondent also stated that Article 4.1(b)(i)-(ii) concerning a mediator's signature or attestation does not allow for confidentiality.
- 4.39 In respect of Scotland, respondents stated that the Civil Evidence (Family Mediation) (Scotland) Act 1995 already applies to family mediation and that mediation under the Convention is necessarily different. The respondent raised a question as to whether analogous provisions to those in the 1995 Act should be included in the implementing legislation, and the need for the definition to be clearly expressed in the implementing legislation, for example by setting out that a mediation has taken place with the assistance provided by a third party.

4.40 Another stated that consideration should be given to oral evidence being recognised in Scotland, as in the provisions of Section 4 of the Arbitration (Scotland) Act 2010.

Q8: The Convention states that a settlement agreement must be concluded “in writing” and that this requirement will be met if it is recorded ‘in any form’. Do you envisage any difficulties for the enforcement of settlement agreements under the Convention given the broad definition of “in writing”?

- 4.41 There were 14 responses to this question. The majority of respondents foresee no issues with the requirement for settlement agreements to be concluded in writing, in any form.
- 4.42 Respondents noted that although it is a broad requirement, modern methods of communication need to be catered for and the broad definition allows the Convention to keep up to date with technological advances. It was also explained that the “in writing” requirement is common practice, as concluded mediated settlement agreements are often recorded in a Tomlin Order or another form of court order.
- 4.43 On the other hand, the concern raised by respondents was that the broad definition may make it easier for parties to wrongfully claim that an agreement had been reached when this may not in fact be the case.
- 4.44 It was, however, reflected in responses that if any issues do arise there are sufficient safeguards under Article 4 of the Convention. The courts would have the necessary powers to resolve issues and it was noted that the high standard of proof required by English courts presents a further safeguard. It was also noted that if there were serious concerns surrounding the form of conclusion of a settlement agreement, these could be dealt with under Article 5 of the Convention, which lays out the grounds for refusing to grant relief.
- 4.45 One respondent also expressed the view that this provision in the Convention should not be a cause for concern for enforcement in Scotland, if the requirement complied with the Requirements of Writing (Scotland) Act 1995 and the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.
- 4.46 It was stated by another respondent that oral agreements are recognised in Scotland, therefore this should be taken into consideration.

Q9: What types of “other” evidence should a Competent Authority consider as acceptable evidence of settlement agreements in the absence of the proof specified in Article 4.1.b (i)-(iii) of the Convention?

- 4.47 There were 18 responses to this question, attracting a variety of views on the types of “other” evidence which should be acceptable to the Competent Authority.
- 4.48 Five respondents stated that the evidence should be in written form, such as a copy of the written agreement or other written confirmation by the parties, including other documentation outside of those listed in Article 4.1b of the Convention. This could be extrinsic contemporaneous correspondence between the parties, which does not divulge what was discussed, but demonstrates that an agreement arose from mediation, taking account of the date of the correspondence in relation to the mediation date, the active participation of all parties and the reliability of the source.
- 4.49 Four respondents also suggested that recordings and oral evidence should be admissible, with oral evidence currently being admissible in Scotland, and that verbal evidence could be used to explain or determine what has been put in writing. It was submitted that a film or video could be presented as evidence, so long as it was accompanied by a signed Affidavit confirming its origins and legitimacy. One respondent expressed the view that a mediator should not be able to give evidence.
- 4.50 Four of the respondents did however observe that admissible evidence is a matter for the UK courts to decide on a case-by-case basis, and one respondent stated that a UK court could deal with “other” evidence in general and flexible terms such as “any other evidence acceptable to the court” consistent with the wording in the Convention.

Q10: Article 5.1(e) of the Convention states that enforcement may be refused if “There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement”. Do you have any comments on which ‘standards’ may be applicable?

- 4.51 There were 13 responses to this question. The majority of respondents acknowledged that mediators adhere to a set of standards prescribed either by a professional body or institution and this will normally be agreed with the parties. It was also the view of most respondents that due to the flexible and wide-ranging nature of mediation, there should not be a general mediation code of conduct.
- 4.52 One respondent noted that the main issue is ensuring parties are protected in the event a mediator fails to adhere to high standards and questioned what the

approach would be to investigate alleged breaches of standards and if it had a causal link to any decision made by either party, as this may widen the scope for satellite litigation.

- 4.53 One respondent suggested that mediator training can be used to ensure high standards, and another noted that the lack of mediator standards is not an issue, as the competent authority would be expected to draw on reputable established domestic and international standards and English law.
- 4.54 Three respondents suggested that through the implementation of the Convention, UK legislation may be used to incorporate a code of conduct and the UK could introduce a compulsory professional standard for mediation.
- 4.55 Respondents suggested that the following standards may be applicable:
- Good faith;
 - Fairness;
 - Impartiality;
 - Confidentiality;
 - Neutrality;
 - Duty of care;
 - Duty of disclosure;
 - Independence;
 - Competence to mediate;
 - Freedom from conflict of interest.

Q11: The Convention provides that each Contracting Party to the Convention shall enforce a settlement agreement. What types of provision are usually included in settlement agreements that may need to be enforced? I.e. will the Competent Authority need particular powers to cover these provisions?

- 4.56 There were 11 responses to this question. Respondents provided a number of examples of provisions which may be included in settlement agreements:
- monetary obligations, such as financial amounts which one party agrees to pay to the other and the timeframes agreed for any such payments, and the releases of claims and promises not to sue;
 - details of any agreement for the future commercial relationship (and how the parties have agreed to conduct themselves), such as provisions that amend or restructure the relationship, that require parties to effect transfers of securities such as shares or bonds, or even provisions that require individuals to perform certain services or actions;

- agreement about any other transfers between the parties (including goods, or services), which could include the concept of specific performance which is seen by the courts as an equitable remedy available in the event of a breach;
- clarity on which law applies and where the settlement agreement can be enforced;
- all standard contractual terms such as payment of monies, renewed contractual terms, exchange of property ownership, termination of legal proceedings etc;
- obligations to execute documents, transfer assets, observe any particular provisions regarding confidentiality;
- the inclusion of re-litigated issues and rules on recovery of legal costs.

4.57 The majority of respondents stated that the Competent Authority would not need any particular powers to cover these provisions under the Convention. The general consensus was that UK courts, if deemed to be the Competent Authority, currently has the powers necessary to enforce each element of a mediated settlement agreement.

4.58 A minority of respondents did indicate that the Competent Authority may need additional or general powers to enforce the terms of applicable settlement agreements, given the likelihood that some will be complex and involve a wide range of rights and obligations, and in the interests of clarity.

4.59 A respondent suggested that the Competent Authority may need specialist expertise available to it in complex situations. For example:

- a breach of confidentiality provision within settlement agreements;
- a dispute as to whether a settlement covers particular parties or issues which are then “re-litigated”;
- questions as to whether a settlement is enforceable because it contravenes some other rule of law, e.g. agreements which are in restraint of trade or breach competition law;
- where some legal concepts may be unfamiliar in the jurisdiction where enforcement is sought e.g. the concept of trust.

Q12: What are your views on the provisions of the Convention meaning that:

a) If the UK were to become Party to the Convention, it would be expected to enforce settlement agreements of both contracting and non-contracting parties?

4.60 There were 13 responses to this question. The general sentiment of responses is that no issues are foreseen. Two respondents stated that they had no concerns with the provisions of the Convention that mean there is no reciprocity requirement and no concept of place of mediation under the Convention.

- 4.61 In response to question 12.a, most respondents stated that there are no concerns or difficulties envisaged regarding this provision, and the immediate impact of it is likely to be minimal. It was noted that this provision is a core part of the Convention and could strengthen the reputation of the UK as an international dispute resolution centre, and may encourage parties to mediate in the UK, since under the Convention international mediated settlement agreements can be enforced against non-contracting parties.
- 4.62 One respondent stated that the distinction between contracting and non-contracting parties is not relevant, and that the fact that a mediated settlement agreement emanates from a non-contracting state does not necessarily mean it is more likely to be problematic for the English courts to enforce than if it comes from a contracting state.
- 4.63 One respondent suggested that the non-reciprocal nature of the Convention may be considered as a disadvantage to UK-based mediations. They also explained that this provision could be advantageous for the UK's legal sector as it will be called upon for advice and assistance on the enforcement of mediated settlement agreements in the UK. The respondent also stated that Articles 4 and 5 of the Convention provide sufficient safeguards against enforcement of mediated settlement agreements from jurisdictions which have not become party to the Convention and may not have adopted the Convention approach.

b) If the UK were not to become Party to the Convention, UK mediated settlement agreements could still be enforced in a country which is a party to the Convention?

- 4.64 In response to question 12.b, some respondents expressed the view that it is beneficial for parties to have the option to enforce UK mediated settlement agreements in jurisdictions that are a party to the Convention, due to the reputation of the UK legal system. Although it was noted that in this instance the interpretations given by the other jurisdiction would need to be considered. One respondent stated that the location of the other party is likely to be the main driver in determining where an application for enforcement is made.
- 4.65 Two respondents noted that due to the non-reciprocal nature of the Convention mediated settlement agreements that are in scope of the Convention would already be enforceable in states that are parties to the Convention.
- 4.66 One respondent stated that this specific effect of the Convention supports the case for the UK to sign and ratify the Convention.

Q13: The Government will consider whether the UK should make either reservation under Article 8 should it ratify the Convention, namely:

- a) “it shall not apply this convention to settlement agreements to which it is a party or to which any Governmental agencies or any person acting on behalf of a Governmental agency is a party”; and/or
- b) “It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention”

What are your views on this?

- 4.67 There were 15 responses to this question, with seven respondents stating that the UK should not make either of the two permissible reservations if it became a Party.
- 4.68 One respondent cautioned that there is no provision which would exclude the operation of the rules on reservations in Articles 20 and 21 of the Vienna Convention on the Law of Treaties 1969 and customary international law. Therefore, based on the principle of reciprocity in reservations, if the UK did make reservations, then other Contracting Parties which have not made the same reservations may invoke these against mediation agreements to which the UK Government is party or to UK-seated mediation agreements.
- 4.69 With respect of reservation a), nine respondents stated that the UK **should not** apply this reservation, with only one respondent stating that it should. Comments included:
- that the UK may wish to ensure the existing legislative regimes on the privileges and immunities of the Crown and of foreign sovereign entities are not interfered with before reaching a final decision;
 - that given the low number of ratifications so far, there is little commentary or case law to show what potential issues may arise under the Convention;
 - that mediation settlements in the public sector can offer potential savings of public money and the potential to provide reassurance and incentivisation in a wide range of areas.
- 4.70 With respect to reservation b) the majority of respondents (13) were **not in favour** of the UK making this reservation because:
- parties should have the option to opt out rather than there being a requirement to opt in, the latter of which could add an extra layer of complexity to settlement agreement drafting and negotiation;
 - it could compromise the main aim of the Convention to ensure “that settlement agreements are as widely binding and enforceable as possible” and another stated that it “may undermine the spirit of co-operation with the hope of amicable resolution that underpins mediation”.

- 4.71 However, three respondents did favour the opt-in approach, applicable if the UK were to make reservation (b), stating that:
- the Convention should only apply to those settlement agreements where parties have agreed to the Convention applying;
 - the reservation would not prevent parties applying the Convention and it may promote party autonomy, ensuring that parties have a choice in the method of enforcement of their settlement agreement;
 - this reservation would also be commercially sensible and consistent with the jurisprudence of the English court on the general restraint from interfering with commercial agreements where the parties are not usually sophisticated, and they are not considered to be of “unequal bargaining powers”;
 - the Convention already excludes certain types of disputes from its scope of application where bargaining powers are usually unequal such as family disputes, inheritance and consumer disputes.

Q14: Do legal practitioners consider that there could still be confusion or uncertainty about when the Singapore Convention may apply? I.e., could a disputing party seek to invoke the Convention if, during the course of arbitral proceedings, a mediation resolves the matter at hand without an arbitral award being handed down?

- 4.72 There were 14 responses to this question. The majority of respondents do not believe that there would be confusion amongst the legal sector or competent authorities as to when the Convention may apply.
- 4.73 Respondents stated that experienced commercial practitioners will always provide for enforcement in the settlement agreement and generally feel that the Convention is clear in its intentions that as long as a mediated agreement is not concluded by way of an arbitral award or a judgment, then the Convention would apply. If the parties in parallel proceedings settled in mediation, with both parties agreeing to the terms, then it is expected that they would agree to discontinue the arbitration or court proceedings. If the parties were ordered to mediate as part of arbitration proceedings, then any resulting mediation agreement could also be merged into a greater arbitral award or rendered by the tribunal into a consent order, outside of the Convention.
- 4.74 Two respondents stated that in England and Wales, new Civil Procedure Rules (CPR) would be needed to provide clarity on when the enforcement can be applied for, with clear procedural gateways to be laid out in new court rules/practice directions. One respondent also stated that it may be necessary for a party to have a choice between using the Convention or a normal Tomlin Order.

- 4.75 One respondent stated that it is clear that if the conditions set out in Article 1(3) are met then the Convention will not apply. However, three respondents expressed the view that Article 1(3)(a) may lead to ambiguities as to the level of the court's involvement/participation that is expected under this provision. Clear procedures are required to set out how parties are to operate arbitration and mediation, with possible implementing legislation/rules/provisions clarifying how this Article would apply in the UK jurisdictions, including the status of Tomlin Orders in England and Wales.
- 4.76 A further two respondents stated that confusion or disputes are more likely where parties have to demonstrate that a settlement agreement resulted from mediation or where the parties are trying to exploit differences in parallel proceedings.

Q15: Do you consider that a lack of regulation and the potential differences in conduct and standards amongst Parties to the Convention could present any particular challenges to the application of the Convention in the UK?

- 4.77 There were 11 responses to this question, with the majority of respondents stating that they did not foresee any particular challenges arising from a lack of regulation or potential differences in conduct or standards.
- 4.78 Comments to this effect were:
- that the Convention is not unique in this respect as the same objection applies to the 1958 New York Convention on Arbitration, which practitioners and clients have been used to operating for many years;
 - that there are sufficient safeguards within Articles 4 and 5 of the Convention.
- 4.79 Two respondents indicated that they would welcome further developments in this area. One suggested that a code of conduct incorporated into the Convention would be a welcome development, and that the greater legitimacy to be given to mediation through the Convention may lead to higher and more uniform standards. The other respondent suggested that a training programme and certified attainment of standards could be considered to reinforce the UK's commitment to high standards in dispute resolution.
- 4.80 A couple of respondents also noted that challenges may arise as a UK competent authority would be required to enforce settlement agreements concluded in other jurisdictions regardless of the conduct and standards for mediation in those other jurisdictions. Although Article 5(1)(e) does include a safeguard, it does not cover a situation where the UK court doubts the adequacy of the standards.

Q16: What impact do you consider the Singapore Convention would have on the UK mediation sector and particularly on the enforceability of settlement agreements?

4.81 See Q3.

Q17: Would you foresee any intra-UK considerations if the Singapore Convention was to be implemented in only certain parts of the UK?

4.82 There were eight responses to this question, with three respondents stating that they would not foresee any intra-UK considerations if the Singapore Convention was to only apply to certain parts of the UK. Other comments regarding intra-UK considerations included that:

- UK mediators may be disadvantaged where it is not implemented;
- there would be intra-UK considerations on the issue of oral agreements and regarding third-party contractual rights which should be considered;
- it would not affect the enforcement of mediated agreements across the UK, as this same issue would arise in respect to third states which have not signed. It would not preclude relying on other laws or procedural rules which may enable enforcement of mediated agreements.

4.83 Two respondents did not set out any concerns but did state that they believe that the Convention should apply UK-wide. Respondents from Northern Ireland stated that they believed it was important that the Convention be implemented in Northern Ireland at the same time as the rest of the UK.

Q18: In relation to paragraph 6.11 (of the Consultation Paper) how do you consider that the provisions for enforcement under the Convention would apply in your jurisdiction?

4.84 There were 8 responses to this question, addressing paragraph 6.11 of the Consultation which stated: 'In common law, for England and Wales, if a court determines that a mediated commercial settlement agreement constitutes a contract, or that a foreign judgment relating to a settlement agreement is valid, then enforcement can only be refused on the grounds of unfairness, illegality, public policy or fraud. This provides parties with a mechanism for challenging the enforcement of a mediated settlement agreement but limits such challenges so as to prevent a party from refusing to honour an agreement on the basis that they have simply had a change of heart'.

- 4.85 It was noted by some respondents on behalf of England & Wales that the pre-Convention and the Convention approach to enforcing or not enforcing settlement agreements would have little difference between them. It was also expressed that the more straightforward agreements would benefit from the expedited enforcement process under the Convention. However, more complex agreements that contain a wide range of rights and obligations, may require a court to have a general power to enforce the terms of such settlement agreements.
- 4.86 In addition to this, one respondent explained that there may have to be additional Civil Procedure Rules in England and Wales similar to the provisions for the enforcement of arbitral awards under the 1958 New York Convention in CPR 62.
- 4.87 Regarding the standards under the Convention, one respondent noted that Article 7 of the Convention (similar to that of Article 7 of the New York Convention for International Arbitration) could be used to allow the use of local lesser standards to increase certainty in the validity of a mediated settlement agreement and reduce the potential for legal challenges.
- 4.88 One respondent expressed the view that the grounds of refusal under Article 5 of the Convention were exhaustive and therefore provided increased certainty and predictability for enforcing agreements.

Q19: What are your opinions on the practical benefits of the Singapore Convention providing for direct enforceability or in respect of the benefits of the wider grounds than in the existing common law?

- 4.89 There were 12 responses to this question and the majority of responses were positive. Most respondents felt that direct enforceability would be beneficial, improving procedural efficiency, as parties would not have to spend time and money in court to enforce settlement agreements.
- 4.90 Other positive comments included that:
- the UK would be able to contribute to the development of the interpretation of the Convention through judgments given on the Convention by UK courts;
 - it will be of particular benefit to parties from outside the UK and from jurisdictions with different legal traditions who might otherwise find UK domestic law and procedural rules difficult to understand and navigate.
- 4.91 One respondent was of the view that the rules on direct enforceability under the Convention were loosely defined and therefore raised the concern that this could lead to parties pursuing further court action to gain clarification but that the common law will be of benefit in resolving any such disputes.

Q20: Who do you consider to be the appropriate Competent Authority for a Party to the Convention to lodge an application or claim with, in order to enforce a mediated settlement agreement (e.g. the County Court, High Court, Court of Session)?

- 4.92 There were 15 responses to this question, with 11 respondents stating that the **High Court** would be the appropriate Competent Authority in England and Wales, given the international nature of settlement agreements. One respondent indicated that the Court of Session would be the appropriate competent authority in Scotland and two respondents stated that the High Court would also be the appropriate competent authority in Northern Ireland.
- 4.93 Two respondents specified that in England and Wales, the Commercial Court sub-division of the Queen’s Bench Division would be the appropriate Competent Authority, in order to access the specialist expertise of the judges. One respondent stated that the County Court may be the Competent Authority to address lower-value cross-border commercial disputes.
- 4.94 One respondent stated that it would be for the courts to decide, as it is not just a matter of assigning a court to be the relevant Competent Authority. Resource, capacity, and experience would need to be considered.
- 4.95 Certain respondents stated that the appropriate Competent Authority in Scotland would be the **Court of Session** and the **High Court** in Northern Ireland.

Q21: Would the implementation of the Convention require any procedural changes to the Court systems of England and Wales, Northern Ireland or Scotland, to enable its effective operation?

- 4.96 There were 13 responses to this question, with ten respondents stating that procedural changes would be required to enable the effective operation of the Convention, in particular in respect of England and Wales:
- new provisions would need to be added to the Civil Procedure Rules to clarify the applicable rules in the context of an application made pursuant to the legislation to implement the Convention;
 - the CPRs may need to be slightly modified to set out and articulate the powers of the Court to grant orders to enforce, in an expedited fashion, mediated settlement agreements under the Convention.
- 4.97 Some respondents made recommendations and suggestions relating to implementation, for example:

- the recommendation of an expedited procedure similar to the enforcement of arbitration awards, and CPR similar to those applicable to the New York Convention in CPR 62;
- the suggestion to include a requirement for parties to mention any mediated settlements applicable under the Convention in a Case Management Conference checklist or similar, to identify issues early in the process;
- that the same process of specific shortened applications as already applies in other convention enforcement claims could apply to this Convention;
- that it would be better to have an expedited procedure similar to enforcement of arbitration awards. Procedural changes will be required, otherwise the route to enforcement would presumably be to issue a part 7 or part 8 claim under the existing CPRs, and potentially make an application for summary judgment. Any procedure will need to be able to cater for more complex settlements and/or applications where enforcement is challenged on substantive grounds. Although part 7 of the existing CPRs would avoid the need to create a parallel enforcement process, it would mean that ratification of the Convention would be largely symbolic.

4.98 Respondents from Scotland commented that Chapter 62 of the Court of Session Rules 1994 may need to be amended in order to support the full policy intent and that the Convention would need to be legislated by an Act of Sederunt, i.e. secondary legislation made by the Court of Session.

4.99 Respondents from Northern Ireland explained that changes to High Court rules would be required in order to provide a mechanism so that agreements are recognised and enforced by the High Court.

Q22: As mediation practice and legislation are well established in the UK, the Government does not intend to use the Model Law provisions to implement the Singapore Convention. Do you have any views on this or on whether the UK should in fact apply the Model Law instead of ratifying the Convention?

4.100 There were 10 responses to this question, with 9 respondents agreeing with the Government's view that the UK **should not** seek to use the Model Law, either instead of the Convention or in order to implement the Convention in domestic law.

4.101 One respondent stated that they had an open mind on the use of the Model Law. There has been precedent for adoption of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Arbitration (which applied to Scotland alone) in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Q23: What other comments, if any, do you have?

4.102 There were three responses to this question. All respondents reiterated their support for the UK signing and ratifying the Convention, to confirm the UK as a key international centre for dispute resolution.

4.103 Further comments included that:

- becoming a Party would be beneficial for cross-border commercial dispute resolution and the UK court load;
- as the Convention applies to cross border commercial disputes any concerns that arise in regard to domestic mediation should not impact the decision on whether to sign and ratify the Convention.

5. Impact Assessment, Equalities and Welsh Language

Impact Assessment

- 5.1 It is not possible at this stage to quantify the impact of the UK becoming a party to the Singapore Convention on businesses, charities, the voluntary sector, or the public sector. The Convention is not intended to impose any burden, regulatory or financial, on business or other entities. Given the responses received and summarised above, the Government estimates there will be a positive impact on the mediation sector, and on courts. The Government will undertake further work to quantify the impact when implementing the Convention.

Equalities

- 5.2 The Government does not envisage that the UK becoming a Party to the Singapore Convention on Mediation would result in people being treated less favourably because of any protected characteristic, and therefore our assessment is that the proposal to sign and ratify the Singapore Convention on Mediation is not directly discriminatory within the meaning of the Equality Act 2010, nor will it amount to indirect discrimination within the meaning of that Act.
- 5.3 The Government did not receive any equality-related responses to the Consultation.

Welsh Language Impact Test

- 5.4 In line with guidance set out in the MoJ Welsh Language Scheme, the Government does not consider it necessary to translate this document into Welsh. The Government does not believe that the ratification of the Singapore Convention will impact on the use of the Welsh language in Wales but will consider providing a Welsh language translation on request.

6. Conclusions and next steps

Decision and rationale

- 6.1 The Government has concluded that it is the right time for the UK to become a Party to the Singapore Convention on Mediation, as a clear signal to our international partners that the UK is committed to maintaining and strengthening its position as a centre for dispute resolution and to promote the UK's flourishing legal and mediation sectors.
- 6.2 Mediation is a dispute resolution process which is integral to the UK justice system, and it is estimated that commercial mediation can save businesses around £5.9 billion per year in management time, relationships, productivity, and legal fees with the value of UK mediated cases each year being estimated at approximately £20bn as of February 2023. The Centre for Effective Dispute Resolution (CEDR) noted the emergence of online mediation in its Ninth Mediation Audit in 2021 and predicted that this will serve to increase the overall level of mediation activity, and cross-border mediation in particular,² in the future. CEDR stated that online mediation is here to stay and that 'the nature of the field has permanently changed' in their latest Audit of 1 February 2023.³ In England & Wales, the Government has also set out its vision to integrate mediation as an essential step within the court process for civil claims.⁴
- 6.3 Commercial mediation can support businesses who may be looking for more cost-effective methods of resolving their disputes, outside of the traditional routes of litigation and arbitration, with aspirations of preserving their important and potentially long-standing business relationships by reaching an amicable and mutually agreed resolution. The uniform framework for the effective recognition and enforcement of international mediated settlement agreements, which the Convention provides, will increase confidence to trade across borders and between different legal jurisdictions, by providing a clear and expedited process for resolving commercial disputes through mediation.
- 6.4 The Convention's non-reciprocal nature means that the settlement agreements that UK courts may be asked to enforce, as a Party to the Convention, do not need to have been concluded in the jurisdiction of another Contracting State. The UK will therefore have a duty to recognise and enforce settlement agreements from any

² Centre for Effective Dispute Resolution '[The full Ninth Mediation Audit](#)'

³ CEDR '[The Tenth Mediation Audit](#)'

⁴ Consultation paper: [Increasing the use of mediation in the civil justice system - GOV.UK \(www.gov.uk\)](#)

jurisdiction, provided they meet the international and other criteria of the Convention. This will enable wide application of the Convention and wider use of mediation agreements, reinforcing and potentially increasing the UK's attractiveness as a respected jurisdiction for international dispute resolution.

- 6.5 Mediation practice is well-established in the UK, including the negotiation and enforcement of cross-border mediated settlement agreements, meaning that the UK is well-placed to implement and operate the Convention. The UK has a mediation sector with a wealth of experience in dealing with complex mediated settlement agreements, and world-renowned justice systems ready to apply and enforce the provisions of the Convention.
- 6.6 The Singapore Convention will not only boost the mediation sector in the UK and internationally, but signing and ratifying will also reaffirm the UK's intention to build upon its long history of leadership in international law-making fora such as the UN and the Hague Conference on Private International Law, by strengthening the UK's existing Private International Law relationships and establishing new relationships with international partners across the globe. The Convention could also present opportunities for the UK in the Indo-Pacific, Middle East, and Africa, given the wide geographical reach of the signatories and those who have ratified so far, aligning with the ambitions of the Government's Integrated Review of 16 March 2021.⁵

Specific provisions and Implementation

Reservations

- 6.7 As set out in the Consultation, the Convention includes two permissible reservations under Article 8 which ratifying States can choose to apply if they wish to do so. The first permitted reservation is that the Convention will not apply to mediated agreements involving Governmental or state parties.
- 6.8 The UK will **not** apply this first reservation at Article 8(1)(a) as it would exclude any mediated settlement agreements involving the UK Government. It is considered that the reputation of mediation and of the Convention will be strengthened by the UK not applying this reservation. In any event, the UK Government does often make provision in its contracts to resolve commercial disputes through formal mediation, and where it does, we would wish such agreements to be enforceable in UK courts under the Convention as well as other courts – as discussed further above, if the UK does not make a reservation in this respect, reciprocal reservations are less likely. It is also noted that the UK Government and its agencies will still be able in

⁵ [Global Britain in a competitive age \(gov.uk\)](https://www.gov.uk/global-britain-in-a-competitive-age)

any particular mediated agreement to opt out of applying the Convention as it may consider appropriate from time to time, under Article 5(1)(d) as set out below.

- 6.9 The second possible reservation at Article 8(1)(b) is that the Convention would not automatically apply to mediated settlement agreements, and mediating parties would have to opt in for the Convention to apply.
- 6.10 The UK will **not** apply this second reservation, as it could be contrary to the Government's aims of promoting mediation as an effective method of dispute resolution and providing UK businesses with a uniform process for enforcing a cross-border commercial mediated settlement agreement. The Convention will therefore be applicable to any commercial cross-border mediated settlement agreement.
- 6.11 It should be noted that parties will still be able to opt-out of the Convention if they so wish, by explicitly stating in their agreement that the Convention should not apply, thereby retaining autonomy without limiting the Convention's application in the UK. This opt-out would fall under Article 5(1)(d) of the Convention as confirmed at the 51st Session of the UNCITRAL (25 June-13 July 2018), where it was recommended that the UN General Assembly consider, with a view to adopting, the Convention, it was clarified that Article 8 'subparagraph 1 (b) referred to an opt-in possibility, and that article 5, subparagraph 1 (d), would find application where the parties would agree to opt out of the application of the draft convention'.⁶
- 6.12 The Government considers that signing and ratifying the Convention in full, without reservations, will allow the UK to reaffirm its position as a hub for international dispute resolution and applying neither reservation will support this notion.

Signature, Ratification and Entry into Force

- 6.13 The Convention allows for parties to both sign and ratify at the same time. However, many parties have signed the Convention without ratifying immediately. The Government will move to sign the Convention as soon as possible, as an important signal of the commitment to mediation and to maintaining the UK's position as a centre for international dispute resolution. Ratification will take place once all of the necessary implementing legislation and rules have been put in place to facilitate the Convention's smooth operation in the UK.
- 6.14 The Convention will come into force in the UK six months after the UK has deposited its instrument of ratification with the UN Headquarters in New York. The UK will champion the Convention internationally to encourage further ratifications.

⁶ [51st Session UNCITRAL](#)

Other specific provisions and implementation under consideration

6.15 This section further discusses certain comments made by respondents regarding the operation and implementation of the Convention in the UK. The Government would like to thank respondents for their views on implementation and will continue to keep these under review as it moves towards implementation and ratification of the Convention.

Hybrid Proceedings

6.16 Article 1(3)(a) of the Convention sets out settlement agreements to which the Convention does not apply. The Consultation document stated that the Convention “will not apply to International Mediated Settlement Agreements reached through hybrid proceedings, such as during the course of court proceedings or arbitration.”⁷ Consultees commented that this Article may lead to ambiguities around the level of the Court’s involvement and that clear procedures are required to set out how parties are to operate arbitration and mediation and to clarify the status of Tomlin Orders. The Government now considers that the Convention could apply to both stand-alone mediation agreements and also those negotiated during the course of court or arbitration proceedings, as long as the final settlement agreement can be shown to have resulted from mediation. The Government will keep this under review as it moves toward implementation of the Convention in the UK.

Tomlin Orders

6.17 According to UNCITRAL, the text of the Convention has been carefully drafted to avoid overlap with other existing and future conventions, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), the Convention on Choice of Court Agreements (2005) and the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).⁸ The Government will continue to assess the interaction between the Convention and these other international agreements and whether as a result Tomlin Orders, and similar orders, should fall outside the scope of the Convention or not.

⁷ Paragraph 4.2. Consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the “Singapore Convention on Mediation”): https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/1051713/singapore-convention-on-mediation.pdf

⁸ [United Nations Convention on International Settlement Agreements Resulting from Mediation \(New York, 2018\) \(the "Singapore Convention on Mediation"\) | United Nations Commission on International Trade Law](#)

- 6.18 The Government is considering joining Hague 2019, through which civil and commercial judgments within the scope of Hague 2019 can be recognised and enforced in another contracting country. On 15 December 2022, the Government launched a public consultation entitled ‘Consultation on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019)’ which closed on 9 February 2023 and can be found here: [Hague 2019 Consultation Paper](#)

Ground for refusing relief and mediator standards

- 6.19 The Government has noted concerns as to how Article 5(1), the grounds for refusing relief, would operate in cases where an enforcing court is faced with party disagreement over how the terms of the agreement should be interpreted, given that the purpose of the Convention is to enable settlement agreements to be enforced without the need to prove breach of contract.
- 6.20 The Government has also noted concerns regarding the provisions of Article 5(1)(e) in particular, which refers to a serious breach of mediator standards. The Government notes that the UK does not have a set of standards for mediators but that a large number of mediators are registered with voluntary registration bodies which set behaviours as a condition of membership, and that mediation is often conducted by UK legal practitioners whose professional conduct for reserved legal activities will be subject to regulation by professional legal bodies and they would be expected to act in accordance with standards of conduct in all their activities. The government is consulting on regulating or strengthening the voluntary self-regulation already in place for mediators operating in England & Wales. The Government will continue to consider these concerns and the implications of implementing the Convention.

Role of the Courts in enforcing mediated settlement agreements

- 6.21 The Government has noted respondents’ views that mediated settlement agreements can contain wide-ranging provisions which a party could later seek to enforce and therefore a judge could, on occasion, be asked to enforce an agreement under the Convention where they may not have previously had jurisdiction to hear a dispute. There was some suggestion that the Court may therefore require some additional powers to ensure the effective enforcement of the provisions of the Convention.

Oral settlement agreements

- 6.22 One respondent stated that oral mediated settlement agreements are currently recognised in Scotland and that this should therefore be taken into consideration when considering implementing the Convention.

Relevant Competent Authority

6.23 The majority of respondents indicated that the High Court is the most appropriate Competent Authority in England and Wales to consider applications for enforcement of cross-border mediated settlement agreements under the Convention. With regards to Northern Ireland and Scotland, it has been suggested that the relevant Competent Authority will be the High Court of Northern Ireland and the Court of Session respectively.

Code of conduct and recording mediation data

6.24 Some respondents considered that the development of a code of conduct to work alongside the Convention could give greater legitimacy to mediation and more uniform standards, including suggestions that training or the attainment of certified standards for mediators and could also be considered to reinforce the UK's commitment to high standards in dispute resolution. It has also been suggested that the Ministry of Justice could establish a centralised data recording mechanism to improve data recording capabilities in the mediation sector.

Implementing legislation

6.25 The Government will lay the Convention in Parliament ahead of ratification and will ensure that implementing legislation is in place for the three jurisdictions ahead of doing so.

6.26 The Private International Law (Implementation of Agreements) Act 2020 contains regulation-making powers that can be used to implement the Convention in England and Wales, Scotland, and Northern Ireland.

6.27 In each jurisdiction of the UK, implementation will include amendments to rules of court. New or amended Civil Procedure Rules will be required to enable the effective operation of the Convention in England and Wales. Similar changes will be required to the Session Rules in Scotland and High Court Rules in Northern Ireland. The Government will work closely with the relevant authorities of England and Wales and the devolved administrations of Scotland and Northern Ireland with regards to such changes and other aspects of implementation in the three jurisdictions.

Other Government Initiatives

6.28 On 26 March 2021, the Government launched its Family Mediation Voucher Scheme, which offers up to £500 towards eligible mediation cases, encouraging people to resolve their disputes outside of court when safe and appropriate to do so. Full details for the scheme can be found at [Family Mediation Voucher Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/family-mediation-voucher-scheme).

- 6.29 The scheme has proven popular, and we have now invested almost £8.7m in it, with 13,268 vouchers approved as of 20 November 2022. Family Mediation Council survey data from 2,800 cases completed under the scheme suggests that 65% of separated parents reached whole or partial agreement and did not go on to attend court, and a further 3% only attended court to secure a consent order to formalise their agreement. This data does not track cases over time, and further study will be required to understand what percentage may return to court in the future. Mediator surveys further suggested 50% of participants would not have attempted mediation without the financial incentive offered by the scheme.
- 6.30 Following the success of the Family Mediation Voucher Scheme, we are now developing an ambitious programme of work to promote the early resolution of disputes in the private family court. This programme is being designed around three key themes: encouraging uptake of mediation, adjusting the incentives in place for parties to engage with alternatives to court, and communicating with parents earlier.
- 6.31 The Government also launched a consultation which concerns mediation practice in the UK, entitled *Increasing the use of mediation in the civil justice system*.⁹ This consultation closed for responses on 4 October 2022. These proposals demonstrate the Government's commitment to integrating mediation as an essential part of the justice system in England & Wales. A response to this consultation will be published in due course.

⁹ [Increasing the use of mediation in the civil justice system - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/increasing-the-use-of-mediation-in-the-civil-justice-system)

7. Consultation principles

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:

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – Responses to the consultation by category

Respondent category	Number of respondents	% of total
UK Legal organisations and professional associations	9	45
Dispute Resolution practitioners (including mediator organisations)	4	20
Courts and Tribunal representatives	2	10
Academics	3	15
Non-UK based legal organisations	2	10
Total	20	100

Due to the relatively small number of responses to this consultation, the Government has taken the decision not to identify individual respondents.



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